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Received OCT 6 1921







**TWENTY-NINTH EDITION 1921**

# **JEWETT'S MANUAL**

FOR

## **Election Officers and Voters**

IN THE

### **STATE OF NEW YORK**

CONTAINING THE

*Consolidated Election Law, Federal and State Constitutional Provisions Concerning Elections and Elective Officers, United States Statutes concerning Elections, Elective Officers, Citizenship, Naturalization, etc., Political Divisions of State, Counties and Towns, Penal Law Provisions Relating to Crimes Against the Elective Franchise, Public Officers Law, Miscellaneous Provisions as to State, County, City, Town, Village and School Officers and Elections, General Construction Law, and Act to Prescribe Rules for Construction of Consolidated Laws,*

**As Amended to the end of the Legislative Session of 1921, together with Annotations, Forms and Instructions**

---

**By F. G. JEWETT**

*Former Clerk to the Secretary of State*

---

### **TWENTY-NINTH EDITION**

• **COMPLETELY REVISED**

By **JOHN T. FITZPATRICK,**  
*Of the Albany Bar*



ALBANY, N. Y.  
**MATTHEW BENDER & COMPANY,**  
INCORPORATED.

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OCT 6 1921

# POLITICAL CALENDAR 1921

Issued by JOHN J. LYONS, Secretary of State, Albany, N. Y.

## PRIMARY PETITIONS

To designate candidates, petitions must contain 3% of the enrolled voters of party in political subdivision, but need not exceed the number mentioned below, namely:

1,500 signatures for judge of Court of General Sessions, judge of City Court, New York City, or any other office voted for by all the voters in a city of over one million inhabitants. (§ 48.)

1,000 signatures for any office to be filled by all the voters of any other city of the first class or of any county or borough containing more than two hundred and fifty thousand inhabitants. (§ 48.)

500 signatures for any office in a county or borough containing more than twenty-five thousand and not more than two hundred fifty thousand inhabitants, or city of second class or any congressional or senatorial district. (§ 48.)

250 signatures for any office to be filled by all the voters of any other county or any city of the third class or of any assembly district. (§ 48.)

June 28 .....	First day for signing petition. (§ 48.)
Aug. 9 to Aug. 16 .....	Dates for filing designating petitions. (§ 49.)
Aug. 26 .....	Last day to decline designation. (§ 50.)
Aug. 30 .....	Last day to fill vacancy after declination. (§ 50.)
Sept. 1 .....	Certification by Secretary of State, to custodian of primary records, of designations filed in his office. (§ 51.)
Sept. 13 .....	Fall Primary. Hours for voting in New York City, 3 p. m. to 9 p. m. (§ 70.) Hours for voting outside New York City, 7 a. m. to 9 p. m. (§ 70.)
Sept. 15 .....	Last day for custodian of primary records to certify list of elected delegates and alternates to conventions to Secretary of State.
Sept. 19 .....	Last day for custodian of primary records to certify other results of election to Secretary of State. Custodian must also furnish to Secretary of State, on same date, names and addresses of nominees of various parties for Representative in Congress, State Senator and Member of Assembly, where original designations were not filed with said Secretary of State. (§ 89.)

## CONVENTIONS

Sept. 20 .....	First day for holding State and Judicial.
Sept. 27 .....	Last day for filing nominations. (§ 128.)
Sept. 30 .....	Last day for filing declinations. (§ 128.)
Oct. 4 .....	Last day for filing new nominations. (§ 136.)

## INDEPENDENT NOMINATIONS

To nominate independently signatures must be obtained to the number of

12,000 for State-wide offices, with at least 50 for each county (Fulton and Hamilton considered as one). (§ 122.)

5% of total vote for Governor in any political subdivision, except that

3,000 may nominate a candidate in any political subdivision. (§ 122.)

1,500 may nominate a candidate for a borough or county office. (§ 122.)

Sept. 27 to Oct. 4.....	Dates for filing independent nominations. (§ 128.)
Oct. 10 .....	Last day to decline independent nominations. (§ 133.)
Oct. 14 .....	Last day to fill vacancy of independent nominations. (§ 136.)

Boards of Elections or County Clerk should immediately certify list of nominations together with address of nominees of all parties to Secretary of State.

## TOWN NOMINATIONS

Oct. 4 to Oct. 11.....	Dates for filing party nominations. (§ 121.)
Oct. 15 .....	Last day to decline party nominations. (§ 133.)
Oct. 18 .....	Last day to fill vacancy in party nominations. (§ 136.)
Oct. 4 to Oct. 18.....	Dates for filing independent nominations. (§ 128.)
Oct. 22 .....	Last day to decline independent nominations. (§ 133.)
Oct. 25 .....	Last day to fill vacancy in independent nominations. (§ 136.)

## REGISTRATION

## New York City.

## Personal Registration.

Oct. 10, 11, 12, 13, 14..	5 p. m. to 10:30 p. m. }
Oct. 15 .....	7 a. m. to 10:30 p. m. } (§ 150.)

## Cities and Villages of 5,000 or More Inhabitants (except New York City).

## Personal Registration.

Oct. 14, 15.....	7 a. m. to 10 p. m. }
Oct. 21, 22.....	7 a. m. to 10 p. m. } (§ 150.)

## Outside of Cities and Villages of 5,000 or More Inhabitants.

## Non-personal Registration.

Oct. 15, 22.....	7 a. m. to 10 p. m. } (§ 150.)
------------------	--------------------------------

## November 8 ..... General Election.

Polls open 6 a. m. and close 6 p. m. (§ 291.)

## Statements under Corrupt Practices Act and Penal Law.

November 18 .....	Last day to file candidates' expense statements. (Penal Law, § 776.)
November 28 .....	Last day to file committee statements of expense. (§ 546.)



# TABLE

SHOWING WHERE SECTIONS OF THE FOLLOWING FORMERLY  
SEPARATE LAWS WERE INCORPORATED IN THE  
CONSOLIDATED ELECTION LAW.

## A.

### Election Law (L. 1896, ch. 909).

Former Elec. Law Section.	Consol. Elec. Law Section.	Former Elec. Law Section.	Consol. Elec. Law Section.
1	1	16	316
2	290	17	317
3	291	18 pt.	318
4	292	18 pt.	319
5	293	19	320
6	294	30 pt.	160
7	295	30 pt.	161
8	296	30 pt.	162
8a	297	31	163
8b	297	32, subd. 1 pt.	164
9	298	32, subd. 1 pt.	165
10 pt.	299	32, subd. 2	166
10 pt.	300	32, subd. 3	167
10 pt.	301	33, subd. 1	168
11, subd. 1	302	33, subd. 2	169
11, subd. 2, ¶ a	190	33, subd. 3 pt.	170
11, subd. 2 pt. of ¶ b.	191	33, subd. 3 pt.	171
11, subd. 2 pt. of ¶ b.	192	34, subd. 1	172
11, subd. 2 pt. of ¶ c.	193	34, subd. 2	173
11, subd. 2 pt. of ¶ d.	194	34, subd. 3	174
11, subd. 2 pt. of ¶ d.	195	34, subd. 4	175
11, subd. 2, ¶ e.	196	34, subd. 5	176
11, subd. 2, ¶¶ f, g and pt. of ¶ h.	repealed	34, subd. 6 pt.	177
11, subd. 2 pt. of ¶ h.	197	34, subd. 6 pt.	178
11, subd. 2 pt. of ¶ i.	198	34, subd. 6 pt.	179
11, subd. 2 pt. of ¶ i.	199	34, subd. 6 pt.	180
11, subd. 2 pt. of ¶ j.	200	34, subd. 6 pt.	181
11, subd. 2, ¶ k.	201	34, subd. 6 pt.	182
11, subd. 2, ¶ l.	repealed	34, subd. 7	183
12 pt.	303	34, subd. 8	184
12 pt.	304	34, subd. 9	185
12 pt.	305	34, subd. 10	186
12 pt.	306	34, subd. 11	187
12 pt.	307	35, subd. 1	188
12 pt.	308	35, subd. 2 pt.	189
12 pt.	309	35, subd. 2 pt.	190
12 pt.	310	35, subd. 2 pt.	191
13 pt.	311	35, subd. 2 pt.	192
13 pt.	312	35, subd. 2 pt.	193
14 pt.	313	35, subd. 3	194
14 pt.	314	36, subd. 1	195
15	315	36, subd. 2	196

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Former Elec. Law Section.	Current Elec. Law Section.	Former Elec. Law Section.	Current Elec. Law Section.
50	2	110, subd. 3 pt.	370
51	3	110, subd. 3 pt.	371
52	4	110, subd. 3 pt.	372
53	5	111 pt.	373
54	6	111 pt.	374
55	7	112 pt.	375
56 pt.	120	112 pt.	376
56 pt.	121	113, subd. 1	377
56 pt.	124	113, subd. 2	378
56 pt.	125	113, subd. 3	379
56 pt.	126	113, subd. 4	380
57 pt.	122	114	381
57 pt.	123	130	430
58	127	131	431
59	128	132	432
60	129	133	433
61	130	134 pt.	434
62	131	134 pt.	435
63	132	134 pt.	436
64	133	135	437
65	134	136	438
66, subd. 1 pt.	135	137	439
66, subd. 1 pt.	136	138	440
66, subd. 2	137	139	441
80	330	140	442
81	331	141	443
82	332	142	444
83	333	160	390
84 pt.	334	161	391
84 pt.	335	162	392
84 pt.	336	163	393
84 pt.	337	164	394
84 pt.	338	165	395
84 pt.	339	166	396
85	340	167	397
86 pt.	341	168	398
86 pt.	342	169	399
87	343	169a	400
88	344	169b	401
89	345	169c	402
100	350	169d	403
101	351	170	404
102	352	171	405
103, subd. 1 pt.	353	172	406
103, subd. 1 pt.	353	173 pt.	407
103, subd. 2	354	173 pt.	408
103, subd. 3	355, subd. 1	174	409
103, subd. 4	355, subd. 2	175	410
104, subd. 1	356	176	411
104, subd. 2	357	177	412
105	358	178	413
106	359	179	414
107	360	179a	415
108, subd. 1 pt.	361	179b	416
108, subd. 1 pt.	362	180	417
108, subd. 2	363	181	418
108, subd. 3	364	182	419
109	365	182a	Repealed
110, subd. 1 pt.	366	183	420
110, subd. 1 pt.	367	184 pt.	421
110, subd. 2	368	190	422
110, subd. 3 pt.	369	191	423

## TABLE.

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Former Elec. Law Section.	Consol. Elec. Law Section.	Former Elec. Law Section.	Consol. Elec. Law Section.
182	452	208	545
183	453	209	546
184	454	210	547
185	455	211	548
186	456	212	549
187	457	213	550
188	458	214	551
200	540	215	552
201	541	216	553
202	542	217	554
203	543	218	555
204	544	219	556
205	545	220	557
206	546	221	558
207	547		

## B.

## Primary Election Law (L. 1899, ch. 479).

Primary Elec. Law Section.	Consol. Elec. Law Section.	Primary Elec. Law Section.	Consol. Elec. Law Section.
1	20	4, subd. 3 pt.	80
2	21	4, subd. 5 pt.	81
3, subd. 1 pt.	22	5, subd. 1.	82
3, subd. 1 pt.	23	5, subd. 2 pt.	83
3, subd. 1 pt.	24	5, subd. 2 pt.	84
3, subd. 1 pt.	25	6	85
3, subd. 1 pt.	26	7, subd. 1.	86
3, subd. 2 pt.	27	7, subd. 2.	87
3, subd. 2 pt.	28	7, subd. 3.	88
3, subd. 2 pt.	29	7, subd. 4.	89
3, subd. 2 pt.	30	8, subd. 1.	90
3, subd. 3.	31	8, subd. 2.	91
3, subd. 4 pt.	32	8, subd. 3.	92
3, subd. 4 pt.	33	8, subd. 4.	93
3, subd. 5.	34	9, subd. 1 pt.	94
3, subd. 6.	35	9, subd. 1 pt.	95
3, subd. 7 pt.	36	9, subd. 2.	96
3, subd. 7 pt.	37	10 pt.	97
3, subd. 8.	38	10 pt.	98
3, subd. 9 pt.	39	10 pt.	99
3, subd. 9 pt.	40	10 pt.	100
3, subd. 9 pt.	41	10 pt.	101
3, subd. 10.	42	11	102
3, subd. 11.	43	12	103
3, subd. 12.	44	13	104
4, subd. 1 pt.	45	14	105
4, subd. 2 pt.	46	14a	Repealed
4, subd. 2 pt.	47	15	Repealed
4, subd. 3.	48	16	Repealed
4, subd. 4.	49		

## C.

## Town Enrollment Act (L. 1902, ch. 195).

Town Enroll. Act Section.	Consol. Elec. Law Section.	Town Enroll. Act Section.	Consol. Elec. Law Section.
1 pt.	90	8	94
1 pt.	91	9	95
2	92	10	100
3	93	11	101
4	94	12	102
5	95	13	103
6	96	14	104
7	97	15	Repealed

TABLE.

D.

**Soldiers and Sailors Election Law (L. 1898, ch. 874).**

Soldiers and Sailors Elec. Law Section.	Consol. Elec. Law Section.	Soldiers and Sailors Elec. Law Section.	Consol. Elec. Law Section.
1	500	14	513
2	501	15 pt	514
3	502	16 pt	515
4	503	17	516
5	504	18	517
6	505	19	518
7	506	20	519
8	507	21	520
9	508	22	521
10	509	23	522
11	510	24	Repeated
12	511		
13	512		

E.

**Metropolitan Elections District Law (L. 1898, ch. 876, as amended throughout by L. 1905, ch. 689).**

Metropolitan Elec. Dist. Law Section.	Consol. Elec. Law Section.	Metropolitan Elec. Dist. Law Section.	Consol. Elec. Law Section.
1	470	9 pt	480
2	471	9 pt	481
3	472	9 pt	482
4	473	9 pt	483
5	474	9a	484
6	475	10	485
7	476	11	486
7 pt	477	12	487
7 pt	478	13	488
8	479	14	Repeated

F.

**Act Creating Commissioner of Elections in Erie County (L. 1904, ch. 394).**

Secs. of Act Creating Commissioner, etc.	Consol. Elec. Law Section.	Secs. of Act Creating Commissioner, etc.	Consol. Elec. Law Section.
1	210	7	216
2	211	8	217
3	212	9	218
4	213	10	219
5	214	11	220
6	215	12	221

G.

**Act Creating Commissioner of Elections in Westchester County (L. 1907, ch. 255).**

Secs. of Act Creating Commissioner, etc.	Consol. Elec. Law Section.	Secs. of Act Creating Commissioner, etc.	Consol. Elec. Law Section.
1	270	7	276
2	271	8	277
3	272	9	278
4	273	10	279
5	274	11	280
6	275	12	281

## H.

Act Creating Commissioner of Elections in Herkess County  
(L. 1908, ch. 489).

Secs. of Act Creating Commissioner, etc.	Consol. Elec. La.	Secs. of Act Creating Commissioner, etc.	Consol. Elec. Law Section
1	231	8	237
2	231	9	238
3	233	10	239
4	233	11	240
5	235	12	241
6	235	13	242
7	236		

## I.

Act Creating Commissioner of Elections in Onondaga County  
(L. 1908, ch. 492).

Secs. of Act Creating Commissioner, etc.	Consol. Elec. Law Section	Secs. of Act Creating Commissioner, etc.	Consol. Elec. Law Section
1	250	7	256
2	251	8	257
3	252	9	258
4	253	10	259
5	254	11	260
6	255		

**SECTIONS OF JEWETT'S ELECTION MANUAL AMENDED  
OR OTHERWISE AFFECTED BY THE LAWS OF 1921.**

**ELECTION LAW.**

Section	Chapter	Section	Chapter	Section	Chapter
2	479	110, added	479	418	390
3	479	111, added	479	438	392
15, repealed	479	112, added	479	471, repealed	555
22	64	113, added	479	472, repealed	555
39	479	114, added	479	474, repealed	555
45	479	120, added	479	475, repealed	555
46	479	125	479	476, repealed	555
48	479	127	479	477, repealed	555
53	479	128	479	478, repealed	555
54a, added	64	133, subd. 2	479	479, repealed	555
56	479	135	479	481, repealed	555
58	479	136	479	482, repealed	555
70, subd. 5	479	137	479	483, repealed	555
75	479	209a	556	487, repealed	555
89	479	209, subd. 3	319	488, repealed	555
90	479	393	391	489, repealed	555
Art. 4b, added	479	397	556		

**U. S. CONSTITUTION.**

19th amendment

**TOWN LAW.**

Section	Chapter
130	448

**EDUCATION LAW.**

Section	Chapter	Section	Chapter	Section	Chapter
193	284	210	384	213	384

**GENERAL CONSTRUCTION LAW.**

Section	Chapter
53	70

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PART 1.

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THE ELECTION LAW.

# ELECTION LAW

## OF THE STATE OF NEW YORK

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LAWS OF 1909, CHAPTER 22, WITH ALL AMENDMENTS PASSED TO  
THE END OF THE LEGISLATIVE SESSION OF 1921.

---

**AN ACT** in relation to the elections, constituting chapter seven-  
teen of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor.  
Passed, three-fifths being present.

*The People of the State of New York, represented in Senate  
and Assembly, do enact as follows:*

### CHAPTER 17 OF THE CONSOLIDATED LAWS.

## ELECTION LAW.

- Article 1. Short title; application, definitions (§§ 1-3.)  
2. Enrollment of voters (§§ 4-25.)  
3. Party organization (§§ 35-43.)  
4. Party nominations and designations (§§ 45-53.)  
4 a. Conduct of official primary elections; canvass of returns  
(§§ 70-94.)  
4 b. Conventions (§§ 110-114.)  
5. Nominating certificates; emblems, vacancies (§§ 120-137.)  
6. Registration of voters (§§ 150-184.)  
7. Boards of elections (§§ 190-209a.)  
7 a. Commissioner of elections in the county of Monroe (§§ 210-223.)  
7 b. Commissioner of elections in the county of Niagara (§§ 225-238.)  
8. Times, places, notices, officers and expenses of elections (§§ 290-  
320.)  
9. Ballots and stationery (§§ 330-345.)  
10. Conduct of elections and canvass of votes (§§ 350-382.)  
11. Voting machines (§§ 390-421.)  
12. Boards of canvassers (§§ 430-444.)  
13. United States senators, representatives in congress and presi-  
dential electors (§§ 449-457.)

- Article 14. State superintendent of elections (§§ 470-489)  
 15. Soldiers' and sailors' elections (§§ 500-522.)  
 16. Corrupt practices (§§ 540-562)  
 17. Special provisions for the year nineteen hundred and eighteen  
 (§§ 570-594.)  
 18. Laws repealed; when to take effect (§§ 570, 571.)

## ARTICLE 1.

### SHORT TITLE; APPLICATION; DEFINITIONS.

- Section 1. Short title.  
 2. Application.  
 3. Definitions.

[Schedule of sections thus amended by Laws 1911, chap. 891, § 2, in effect Nov. 15, 1911.]

#### § 1. Short title.

This chapter shall be known as the "Election Law."

**Derivation:** Election Law, § 1.

**Consolidators' general note.**—The Election Law as here consolidated includes the following formerly separate laws, as amended to January 1, 1908:

Primary Election Law, L. 1899, ch. 473 (amending throughout L. 1898, ch. 179).

Town Enrollment Act, L. 1902, ch. 195.

Soldiers' and Sailors' Election Law, L. 1898, ch. 674.

Metropolitan Elections District Law, L. 1905, ch. 689 (amending throughout L. 1898, ch. 676).

Act creating a Commissioner of Elections in Erie County, L. 1904, ch. 324.

Act creating a Commissioner of Elections in Westchester County, L. 1907, ch. 255.

Certain provisions relating to elections in towns, villages and school districts, appearing heretofore in the Town, Village and School Laws, and closely involved in provisions of those laws more analogous to certain parts of the Constitution and the Legislative Law than to the Election Law, have been left in the Town, Village and Schools Laws where they were. The penal provisions already in the Election Law have been allowed to remain, instead of being placed in the Penal Code with the considerable body of provisions there concerning crimes against the elective franchise. But otherwise, and excepting also the constitutional provisions, all the existing statute law of a general nature relating to elections, including certain exceptions to the general scheme, which are in one sense special or local, but without which the general law would be incomplete, e. g. the special provisions for a board of elections in New York City, and for the commissioners of elections in Erie and Westchester counties, are included.

#### ARRANGEMENT OF LAW.

An effort has been made to follow the chronological order of the election process so far as a fairly close adherence to the form of the old law permitted beginning with the primaries and enrollment in parties, continuing through registration for elections, the proceedings in preparation for and upon election day, the proceedings of the boards of canvassers, and coming finally to the

proceedings of the presidential electors in presidential years. To these have been added the provisions which have no special relation to the electors in order of time or which are incapable of adaptation to such an arrangement without fundamental change in the form of the law. The several laws here consolidated were themselves more or less consistently arranged upon the chronological plan, and accordingly the various main divisions of this consolidated law will be found to conform within themselves in greater or less degree to the chronological principle.

#### EDITING.

The rearrangement incidental to the consolidation has made necessary an entire renumbering of the sections of the law. Advantage has been taken of this opportunity to simplify the arrangement by eliminating the "subdivisions" of sections wherever they occurred in the old laws, the division here being into sections only. At the same time many of the old sections and subdivisions, sometimes of inordinate length and not wholly homogeneous in character, have been cut into two or more sections. The sectional numbers run consecutively within the articles, but gaps are left between the articles for new sections. It is conceivable, indeed, that subdivision of sections may be wisely resorted to in certain instances in making further amendments, rather than renumbering, but it was deemed advisable, especially in a law which is subject to such continual amendment as this, to begin with a clean ~~slate~~.

For convenience of consultation, many of the sections have been divided into paragraphs, but without numbers or other designation. No notice of this is taken in the special notes relating to the sections.

The consolidation of several laws herein and the renumbering of the sections have necessitated changes in many references throughout the law. e. g. "the Election Law" becomes "this chapter," "this act" frequently becomes "this article." New section headings have been supplied where necessary, and the old ones amended; new analyses have likewise been prefixed to the articles where necessary, and the old ones amended.

"Elector," "electors," "an elector," have been changed throughout to "voter," "voters," "a voter," except when used of presidential electors. The several laws consolidated herein, like the Constitution, use both terms indiscriminately — sometimes both appear in the same section although "elector" largely predominates. The impossibility of any confusion arising out of the use of the word "voter," the everyday use of the word by everybody outside of legal circles, and particularly the desirability of having a distinctive word for presidential electors, determined the consolidation in favor of "voter" rather than "elector," it having been previously determined that the usage should be made uniform throughout, whichever word was adopted.

The consolidators of this law have spent a large amount of time in merely editing the text. It may be justly charged that such work yields but superficial results in a case where thorough revision is demanded. The consolidators freely concede that such a course was a mere titling of mint, anise and cummin, while letting go the weightier matters of the law. But under the limitations imposed upon the present work there was no alternative. In no instance has the intent of the law been changed in making these verbal changes.

**Purpose of Election Law.** — As to the purpose of election statute, see *Matter of McClosky*, 21 Misc 365 47 N. Y. Supp. 294.

**Construction of Election Law.** — The Election Law must be liberally construed. *Matter of Bulger*, (1905) 48 Misc 384 97 N. Y. Supp. 232.

**The political rights of citizens** are recognized by the laws of this State and the authority of the courts may be invoked for their vindication. *Brown v. Cole*, (1907) 54 Misc 279 104 N. Y. Supp. 169.

**Determination of election questions by Court of Appeals.** — The Court of Appeals will determine a question arising under the Election Law, although the election having been held it has ceased to be of practical importance in the particular case, where the full decision seems to be required to prevent embarrassment in the future from conflicting decisions. *Matter of Madden*, (1895) 148 N. Y. 136.

## § 2. Application.

Except as otherwise herein provided, articles two, three, four, four-a and four-b of this chapter shall be controlling:

1. On the method of enrolling the voters of a party.
2. On the organization and conduct of party committees.
3. On the method of electing members of state and county committees, and delegates and alternates to party conventions.
4. On the organization and conduct of state and judicial district party conventions.
5. On the nomination by parties of all candidates for offices authorized to be filled at a general election, except town, village and school district officers.

Derivation: Added by L. 1911, ch. 891.

Amended by L. 1913, ch. 820; L. 1921, ch. 479, in effect May 2, 1921.

It is doubtless true that § 2, subd. 4 of the election law excepts town, village and school district primaries from the provisions of the general election law, that is, it opens the door for members of a party to vote at a town primary, although not enrolled as such. *Matter of Moore* (1919), 108 Misc. 570, 177 N. Y. Supp. 833.

## § 3. Definitions.

The terms used in this chapter shall have the signification herein defined unless other meaning is clearly apparent in language or context:

1. The term "general election" means the election held on the Tuesday next succeeding the first Monday in November.
2. The term "official primary" or "official primary election" means a primary election held by a party for the purpose of nominating candidates for office or electing persons to party positions and conducted by the public officers charged by law with the duty of conducting general elections. An "unofficial primary" or "unofficial primary election" means any other primary or primary election held by a party or independent body.
3. The term "primary day" means the day upon which an official primary election is held, as in this chapter provided.
4. The term "fall primary" means the official primary election held on the eighth Tuesday before the general election.
5. The term "spring primary" means the official primary election held on the first Tuesday in April in years when a president of the United States is to be elected.
6. The term "unit of representation" means any election district, town, ward of a city, assembly district, or any other political subdivision of the state, respectively, which is the unit from which

members of any political committee or delegates to a party convention shall be elected as herein provided.

7. The term "custodian of primary records" means the officer or board whose duty it is by the provisions of this chapter to provide official ballots for general elections.

8. The term "board of elections" shall include a single commissioner of elections in a county having such an officer and the county clerk in any county which by the provisions of this chapter shall have no such board nor commissioner, except as otherwise provided in special provisions relating to any such county.

9. The term "party" means any political organization which at the last preceding election for governor polled at least fifteen thousand votes for governor.

10. The term "nomination" means the selection in accordance with the provisions of this chapter of a candidate for office authorized to be filled at a general election or at a special election held to fill a vacancy in such office.

11. The term "designation" means any method in accordance with the provisions of this chapter by which candidates for party nominations, or for election as party committeemen or delegates, may be named in order that they may be placed upon the official ballot for any official primary election.

12. The term "official primary ballot" means the ballot prepared, printed and supplied for use at an official primary election in accordance with the provisions of this chapter.

13. The term "party position" means membership in a party committee or the position of delegate or alternate to a party convention.

14. The term "convention" means an assemblage of delegates elected in accordance with the provisions of this chapter, representing a party, duly convened for the purpose of nominating candidates for public office whose nomination by a convention is authorized by this chapter, and for the transaction of other business relating to the affairs of the party not inconsistent with the provisions of this chapter.

15. The term "committee" means any committee chosen, in accordance with the provisions of this chapter, to represent the members of a party in any political subdivision of the state.

16. The term "independent body" means any organization or association of citizens which, by independent certificate, nominates candidates for office to be voted for at a general, special or village election, or town meeting, and which, if such independent body nominated a candidate for governor at the preceding general election of a governor, did not poll at least fifteen thousand votes for its candidate for such office.



17. The term "party nomination" means the selection by a party of a candidate for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

18. The term "independent nomination" means the selection of a candidate by an independent body for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

19. The term "party candidate" or "party nominee" means a person who is selected by a party to be its candidate for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

20. The term "independent candidate" or "independent nominee" means a person who is selected by an independent body to be its candidate for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

21. The term "poll-book" or "primary poll-book," when applied to such a book to be used at a general election or spring or fall primary, outside of a city of over one million inhabitants, means the appropriate poll-book section of the register.

22. Words of the masculine gender include the feminine; and this rule of construction shall not be impaired or affected by the fact that appropriate words are used in certain sections or parts thereof to indicate specifically the masculine and the feminine.

**Derivation:** Election Law, § 60.

Formerly § 2, as amended by L. 1911, chs. 649 and 873; renumbered and amended by L. 1911, ch. 891, amended by L. 1913, ch. 820; L. 1915, ch. 678; L. 1916, ch. 537; L. 1918, chs. 298, 323; L. 1919, ch. 504; L. 1920, ch. 878; L. 1921, ch. 479, in effect May 2, 1921.

A special election day is not a holiday. Rept. of Atty-Gen. (1914), vol. 2, p. 217.

A town meeting is not a general election. Rept. of Atty-Gen. (1914), vol. 2, p. 217.

ARTICLE 2.\*

ENROLLMENT OF VOTERS.

**Section 4.** Delivery of enrollment books where registers do not include enrollments.

3. Enrollment books where registers do not include enrollments.
6. Voting booths and enrollment boxes.
7. Enrollment blanks.
8. Delivery of enrollment blanks to voters on days of registration.
9. Delivery of enrollment blanks to voters on election day where registration is not personal.
10. Enrollment by voters.
11. Examination, sealing and custody of enrollment boxes.
12. Certification of registers, with respect to enrollment occurring on a day of registration.
13. Certification of registers, with respect to enrollment occurring on the day of general election.
14. Opening of enrollment box and completion of enrollment.
- 14 a. Correction of enrollment lists.
- 14-b. Special enrollment upon becoming of age.
- 14-c. Special enrollment for certain voters failing to enroll on election or registration days in the year nineteen hundred and sixteen.
15. Enrollment for a new political party. [Repealed.]
- 15-a. Special enrollment for soldiers, sailors, marines and certain other persons.
16. Books to be furnished containing transcripts of enrollments.
17. Use of duplicate enrollment books at unofficial primaries.
18. Use of registers at official primaries.
19. Right to enroll and vote at primaries.
- 19-a. Special enrollment after moving.
20. New or amended enrollment lists for changed districts.
21. Enrollment entries to be public records, transcripts of enrollment.
22. Publication of enrollment.
23. Judicial review of enrollment.
24. Correction of enrollment with respect to persons not in sympathy with party.
25. Investigation of enrollment.

**§ 4.** Delivery of enrollment books where registers do not include enrollments.

**Derivation:** Formerly § 22. Renumbered and amended by L. 1911, ch. 891, § 4; and amended by L. 1915, ch. 678, in effect May 22, 1915. Originally revised from Primary Election Law, § 3, pt. of subd. 1, as amended by L. 1900, ch. 225, § 1; L. 1903, ch. 111, § 1; L. 1905, ch. 674, § 1; L. 1908, ch. 456, § 1.

Repealed by L. 1919, ch. 504, in effect Oct. 1, 1919.

**§ 5.** Enrollment books where registers do not include enrollments.

**Derivation:** Formerly § 23. Renumbered and amended by L. 1911, ch. 891, § 6; and amended by L. 1915, ch. 678, in effect May 22, 1915. Originally re-

\* The schedule of sections was amended by L. 1911, ch. 891, § 4, in effect November 15, 1911. Section 14 a added by L. 1912, ch. 52, in effect March 19, 1912.



vised from Primary Election Law, § 3, pt. of subd 1, as amended by L. 1900, ch. 225, § 1; L. 1903, ch. 111, § 1; L. 1905, ch. 674, § 1; L. 1908, ch. 456, § 1.

Repealed by L. 1919, ch. 504, in effect Oct. 1, 1919.

## § 6. Voting booths and enrollment boxes.

The board or officers authorized to furnish voting booths in each election district for use at the general election shall cause at least two voting booths of the same kind and description as voting booths used at general elections, to be erected in each place of registration before the first day of registration in each year, and such booths shall be and remain in said places of registration during the registration at the regular meetings for registration during that year; and it shall be the duty of such board or officer to furnish in each voting booth so erected the same articles as are required by law to be placed therein for a general election, which articles shall remain therein during such registration. Such board or officer shall also provide in like manner one enrollment box in each place of registration of sufficient capacity to hold all the enrollment blanks which are to be furnished for such place of registration, which shall be similar to the ballot boxes prescribed by law to be used at a general election. Such board or officer shall also in like manner provide at each polling place on general election day, in each election district wholly outside of a city or village having five thousand inhabitants or more, or partly within and partly outside of any such village, two such voting booths, for the enrollment of voters, the needed articles therefor, and an enrollment box, as above provided.

**Derivation:** Formerly § 25. Renumbered and amended by L. 1911, ch. 891, § 7; and amended by L. 1916, ch. 537; L. 1917, ch. 703, in effect June 1, 1917. Originally revised from Primary Election Law, § 3, pt. of subd 1, as amended by L. 1900, ch. 225, § 1; L. 1903, ch. 111, § 1; L. 1905, ch. 674, § 1; L. 1908, ch. 56, § 1.

## § 7. Enrollment blanks.

There shall also be prepared by the custodian of primary records at public expense, to be borne in the same manner as the expense of furnishing official ballots, and delivered by such custodian with the enrollment books, such number of enrollment blanks for each election district as will exceed by at least twenty-five and

not more than fifty the total number of voters registered in such district. The custodian may also prepare and have ready for emergencies a reasonable number of enrollment blanks without any of the blank spaces filled in, to be furnished in any year for any election district when necessary. The enrollment blanks shall be printed on white paper, and on the face thereof shall be printed the following, or the substance thereof, the regular blanks furnished in the first instance for each election district to be filled in in type so far as possible:

" Primary enrollment for the year.....city (or village or town) of.....; county of.....; ..... assembly district (or ward or town); ..... election district; enrollment number.....

Name of voter.....

" I, ....., who have placed a mark underneath the party emblem hereunder of my choice, do solemnly declare that I am a qualified voter of the election district in which I have registered or voted, and that my residence address is..... (the residence address as it appears in the register, if the enrollment be made on a day of registration, and as it appears in the poll book if the enrollment be made on the day of general election, is to be inserted in such space); that I am in general sympathy with the principles of the party which I have designated by my mark hereunder; that it is my intention to support generally at the next general election, state or national, the nominees of such party for state or national officers, and that I have not participated in any primary election or convention of any other party since the first day of last January. The word 'party' as used herein has the meaning defined by the election law.

.....party.

.....party.



" Make a cross X mark, with a pencil having black lead, in the circle under the emblem of the party with which you wish to

enroll, for the purpose of participating in its primary elections during the next year."

The circles underneath the emblem shall be three-quarters of an inch in diameter, and in them nothing shall be printed. The party emblems shall be the same as those which were on the ballots for each party respectively at the last preceding general election, and such emblems shall be so arranged on each blank that the emblem of the majority party at the last preceding general election of a governor shall be first, and the other emblems shall follow in order in accordance with the vote cast for such office at such election; over each emblem shall be printed, in type clearly legible, the name of the party represented by such emblem. The enrollment blanks shall have thereon the names of those parties only to which this article is applicable.

**Derivation:** Formerly § 26. Renumbered and amended by L. 1911, ch. 891; amended by L. 1913, ch. 820; L. 1916, ch. 537; L. 1917, ch. 703; L. 1918, ch. 323, in effect Apr. 24, 1918. Originally revised from Primary Election Law, § 3, pt. of subd. 1, as amended by L. 1900, ch. 225, § 1; L. 1903, ch. 111, § 1; L. 1905, ch. 674, § 1; L. 1908, ch. 456, § 1.

**Consolidators' note.**—"Cross (X) mark" is here printed "cross X mark," for the reason that the old method of printing similar instructions relating to the voting marks on the ballot sometimes leads voters, when marking their ballots, to add the parentheses to the X, or the horizontal lines at the ends of the arms of the X, or both, with the consequence that their ballots become liable to rejection as having invalidating marks in the one case, and to protest as marked for identification in the other. While such an effect would not follow here in the enrollment, the law obviously intended to prescribe the same voting mark for enrolling and voting—certainly lack of uniformity would be likely to mislead the voter when he comes to mark his ballot—and accordingly the instruction here is given in the same form as later concerning the ballot.

**Who entitled to enroll.**—One who enrolls with the Democratic party one year may enroll with the Republican party the next year. *Matter of Duffy* (1908), 125 App. Div. 406, 109 N. Y. Supp. 979, aff'd 192 N. Y. 582.

The provision of section 26 of the Election Law for marking an enrollment blank with a pencil having black lead is directory merely and although a voter used a fountain pen, he may compel the Board of Elections to place his party affiliation upon the enrollment books of this election district. *Matter of Kirk* (1910), 66 Misc. 535.

As to who are entitled to enroll and vote at primaries, see *Report of Atty.-Gen.* (1903), 354; (1904), 269, 292.

**Enrollment envelopes** should be numbered. *Report of Atty.-Gen.* (1908), 536.

**§ 7-a. Special provision as to number of enrollment blanks in the year nineteen hundred and eighteen.**

Added by L. 1918, ch. 323, in effect Apr. 24, 1918.

Repealed by L. 1919, ch. 504, in effect Oct. 1, 1919.

**§ 8. Delivery of enrollment blanks to voters on days of registration.**

When, in any political subdivision of the state, a voter shall, at any of the regular meetings for registration in any year, present himself personally to the board of election inspectors in any election district for registration, and after he shall have been registered, and not before, as a qualified voter of that election district for the next ensuing general election, or if, where his registration was not required to be personal and he was so registered without personal application, he shall present himself personally to such board for enrollment only, the members of such board shall forthwith and before such voter leaves the place of registration, enter his enrollment number, beginning with number one for the first voter enrolled on the first day, and so on in numerical order, opposite his name, in the appropriate column of the registers. An inspector of opposite political faith shall be designated by the chairman to write the name of the voter on the blank having the enrollment number which shall be opposite his name on such registers, and such inspectors shall fill in the other blank spaces on the enrollment blank, and shall deliver to such voter an enrollment blank having his name on it. No voter shall be given more than two enrollment blanks in any event, nor more than one blank unless he shall spoil, deface, improperly mark, or otherwise destroy the first blank given him. In case a second blank is given him, such members of the board shall draw a line through such voter's previous enrollment number in such registers and shall insert in the same column opposite the name of the voter, the number which shall be upon the new blank to be given him, which number shall always be the lowest number of the enrollment blanks then unused in such election district.

**Derivation:** Formerly § 27. Renumbered and amended by L. 1911, ch. 631, § 9; and amended by L. 1916, ch. 537; L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, pt. of subd. 2, as amended by L. 1900, ch. 225, § 2; L. 1908, ch. 456, § 2.

**Consolidators' note.**—The words "in any event" have been inserted to

make the third sentence say what it means, and "or" made "nor." "The first column in said book" made "books."

The law as it stands requires the *highest* number of unused blanks to be handed to a voter requiring a second set. The purpose of the provision and the actual practice require the *lowest*. The word is accordingly changed.

**§ 9. Delivery of enrollment blanks to voters on election day where registration is not personal.**

When, in any town or village in which personal registration is not required, or in an election district a part of which comprises territory in which such personal registration is not required, a registered voter whose registration was not personal nor required to be personal, and who was not enrolled on a day of registration, shall present himself to the board of election inspectors in an election district at a general election for the purpose of receiving an official ballot to be voted thereat, and after he shall have voted, a member of such board, of opposite political faith from the chairman, to be designated by the chairman, shall forthwith, and before such voter leaves the polling place, enter his enrollment number, beginning with the lowest enrollment number then unused, and so on in numerical order, opposite his name in the appropriate columns of two registers, and shall write his name on the enrollment blank having the enrollment number which shall be opposite his name on such registers, shall fill in the other blank spaces on such enrollment blank, and shall deliver to him an enrollment blank having his name on it the poll clerks shall also enter in the column therefor in their registers the number on the enrollment blank. No voter shall be given more than two blanks in any event, nor more than one blank unless he shall spoil, deface, improperly mark, or otherwise destroy the first blank given him. In case a second blank is given him, such member of the board shall draw a line through such voter's previous enrollment number in such registers and shall insert in the same columns, opposite the name of the voter, the number which shall be upon the new set to be given him, which number shall also be the lowest number on the enrollment blanks then unused in such election district. Enrollment blanks shall be numbered consecutively, beginning with the one succeeding the last number used on the last preceding day of registration.

**Derivation:** Added by L. 1911, ch. 891, § 10, and amended by L. 1916, ch. 537; L. 1919, ch. 604, in effect Oct. 1, 1919.

### § 10. Enrollment by voters.

Such voter desiring to enroll shall then enter a voting booth in said place of registration or polling place, and, after having closed the door thereof, may make a cross X mark with a pencil having black lead in the circle underneath the emblem of the party of his selection and thereupon fold said enrollment blank so as to conceal the face thereof, and, before leaving the place of registration or polling place, shall forthwith deposit the same, as so folded, in the enrollment box in said place of registration or polling place in the presence of the inspectors of election, without in any way indicating the party with which he has or has not enrolled. If a voter declines to enroll, he may return the blank to the inspector in charge of the enrollment box, and the inspector in charge of enrollment shall endorse the name of such voter thereon and deposit the same in the enrollment box, and shall enter opposite his name in the space reserved for the name of a political party, the word "no." One mark crossing any other mark at any angle within the circle shall be deemed a cross mark within the meaning of this article.

**Derivation:** Formerly § 23. Renumbered and amended by L. 1911, ch. 891, § 11; and amended by L. 1916, ch. 537; L. 1919, ch. 604, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, pt. of subd. 2, as amended by L. 1900, ch. 225, § 2; L. 1908, ch. 456, § 2.

**Consolidators' note.** — "Ballot box" changed to "enrollment box" to correspond with [former] section 31 [now § 14]. The reference to "the preceding" section is required by the new arrangement.

### § 11. Examination, sealing and custody of enrollment boxes.

Before the entry of any enrollment number or the delivery of an enrollment blank to any voter, in any year, the said enrollment box shall be examined by the board of election inspectors and when empty shall be locked and sealed by them in such a manner that should it be opened such seal would be broken; and the same shall remain so locked and sealed until the same shall be opened by the custodian of primary records as hereinafter provided. Said boxes shall be in the charge and keeping of the custodian of primary records at all times except during hours of enrollment.



**Derivation:** Formerly § 29. Renumbered and amended by L. 1911, ch. 891, § 12; and amended by L. 1916, ch. 537, in effect May 15, 1916. Originally revised from Primary Election Law, § 3, pt. of subd. 2, as amended by L. 1909, ch. 225, § 2; L. 1908, ch. 456, § 2.

**Consolidators' note.**— "Ballot box" changed to "enrollment box" and "said ballot boxes" to "said boxes," to harmonize with [former] section 31 [now § 14].

**§ 12. Certification of registers, with respect to enrollment occurring on a day of registration.**

At the close of the last meeting for registration in each year the board of election inspectors shall severally subscribe and verify four declarations, one of which shall be printed in or attached to each of the original registers. Such declarations shall be to the effect that the persons shown by such registers are the only persons who registered personally as voters (or, where personal registration was not required, that the persons having enrollment numbers on any such registers are the only registered voters who appeared personally for registration or enrollment) in that district on any of said days of registration and that each voter who appeared personally was given or tendered an enrollment blank and shall set forth the number of the last enrollment blank used on such last day of registration.

**Derivation:** Formerly § 30. Renumbered and amended by L. 1911, ch. 891, § 13, and amended by L. 1915, ch. 878; L. 1916, ch. 537; L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, pt. of subd. 2, as amended by L. 1909, ch. 225, § 2; L. 1908, ch. 456, § 2.

**§ 13. Certification of registers, with respect to enrollment occurring on the day of general election.**

At the close of the day of general election or on the following day in each year, in an election district in which the enrollment of any voters is permitted under this article on the day of such election, the board of election inspectors shall severally subscribe and verify four declarations one of which shall be printed on and attached to each of the original registers. Such declarations shall be to the effect that the persons having enrollment numbers, as shown by the two copies of the register used for enrollments, whose number is higher than the last enrollment number used on the last preceding day of registration, constitute all of the persons voting in that district at such general election whose registration was

not personal and who had not, after such registration, applied for enrollment on a day of registration.

Derivation: Added by L. 1911, ch. 891, § 14; and amended by L. 1916, ch. 537; L. 1919, ch. 504, in effect Oct. 1, 1919.

#### § 14. Opening of enrollment box and completion of enrollment.

It shall be the duty of the chairman of the board of inspectors of each election district, on the first day of registration, to appoint one of the inspectors of opposite political faith to be the custodian of the enrollment box. In election districts where personal registration is required, the box shall be returned to the custodian of primary records immediately after the last day of registration. In districts where personal registration is not required the box shall be returned to the custodian of primary records within twenty-four hours after the close of the polls on general election day, by the inspector designated to deliver the returns. All enrollment blanks contained therein shall remain in such box, and the said box shall not be opened nor shall any of the blanks be removed therefrom until the Tuesday following the day of general election in that year. Such box shall then be opened by the custodian of primary records, and the blanks contained therein shall be removed thereupon by said custodian, and the name of the party designated by each voter under such declaration shall be by said custodian entered against the name of such voter in the appropriate column of the signature copy of the register in a city having more than one million inhabitants, and of the two copies of the registers used for party enrollment elsewhere, for the election district in which such voter resides. Such enrollment shall be completed before the succeeding fifteenth day of February in each year. If cross marks are found in more than one of the circles, or if no cross marks are found in any of the circles of any enrollment blank, the voter who used the enrollment blank thus deficient shall not be deemed to be enrolled, and words indicating the reason why such enrollment is not transcribed shall be entered against the name of such voter in the signature copy of the register in the column reserved for the entry of party enrollments, in any city of over one million inhabitants, and elsewhere in such column in each of the two registers used for party enrollment. When all of the enrollment shall be transcribed



from the blanks to the register, the custodian of primary records shall subscribe and verify a declaration or identical declarations, one of which shall be printed in or attached to each of the said registers, which declaration shall be to the effect that he has correctly and properly transcribed the enrollment indicated on the blank of each voter to the said register, as herein provided.

**Derivation:** Formerly § 31. Renumbered and amended by L. 1911, ch. 891, § 15, and amended by L. 1915, ch. 678; L. 1916, ch. 537; L. 1917, ch. 703; L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, subd. 3, as amended by L. 1906, ch. 227, § 1.

#### § 14-a. Correction of enrollment lists.

Any voter who has been or shall have been enrolled with the same political party for five years or upwards and who, at the time of marking an enrollment blank on any day provided in this chapter for the enrollment of voters, makes a mark in the circle beneath the emblem of a party other than the one with which he desired or intended to enroll, by inadvertence, may at any time after the completion of the enrollment in any year as provided in this chapter and prior to the ensuing first day of July, have his party affiliation changed upon the enrollment list by the custodian of primary records with whom such list is filed by striking out the name of the party with which he is thus wrongly described as being affiliated and inserting the name of the party with which he may declare that he is affiliated by making, subscribing and acknowledging before any officer authorized by law to take the acknowledgment of deeds for record in this state, and filing or causing to be filed with such custodian of primary records, a statement embodying a declaration in substantially the following form: "I, ....., do solemnly declare that I reside in ..... and am a duly qualified voter of the ..... election district of such city (assembly district, ward or town); that at one of the last preceding days for the enrollment of party voters in such election district I received an enrollment blank and made my mark in a circle under one of the party emblems thereon, but such marking was done inadvertently and indicated my enrollment with a party with which I was not then affiliated and with which I did not intend to enroll; and I therefore request that I be specially enrolled with the ..... party. I am in general sympathy with the principles of the ..... party. It is my intention to

support generally at the next general election the nominees of such party. I have been duly and regularly enrolled with such party for at least five years prior to the enrollment at which such mistake occurred. I have not participated in any primary election or convention of any other party during such period of five years." If any of the enrollment lists for the preceding five years in the office of such custodian of primary records do not contain the name of such applicant, as an enrolled voter of the party named in the statement, the custodian of primary records shall require him to produce a transcript of so much of an enrollment list as relates to him, if any, from the office of the custodian of primary records of the city or county in which he may have been enrolled for such year or years, accompanied with proof by affidavit showing his identity with the person whose name appears in such transcript.

Upon the filing of such statement, and all other papers or certificates if required, the said custodian of primary records, if the records support the truth of the applicant's statement, shall cause the request contained in such statement to be complied with, by changing the entry relating to the applicant in the enrollment list to conform thereto and recording in the proper column thereof the reason therefor, including a memorandum briefly describing the papers filed in support thereof.

*Derivation:* Added by L. 1912, ch. 52, § 1, in effect March 19, 1912.

*Special enrollment.*—See L. 1913, ch. 638, authorizing custodian of primary records of Oneida county to correct enrollment where blanks were lost or destroyed before entry in books.

#### § 14-b. Special enrollment upon becoming of age.

Any voter who shall have become of age after the last preceding general election may at any time on or before the fourth Tuesday preceding an official primary in the year following such general election become specially enrolled with any party and have his name, address and party affiliation added to the appropriate columns of the registers of the election district in which he resides, in the manner following:

He shall make and acknowledge before an officer authorized to take the proof or acknowledgment of deeds to be recorded, and file or cause to be filed with the custodian of primary records, a statement embodying a declaration in substantially the following form, the blanks being properly filled in:

"I, ....., do solemnly declare that I reside at (here insert residence address) and am a resident and duly qualified voter of the ..... election district of the ..... assembly district (or of the ..... ward of the city of ....., or of the town of ..... in the county of .....); that I became of age since the last preceding general election; that I am in general sympathy with the principles of the ..... party and it is my intention to support generally at the next general election, state or national, the nominees of such party for state or national offices; that I have not heretofore enrolled with or participated in the primary election of any party. I therefore request that I be specially enrolled with the ..... party."

The same party name shall be inserted by the voter in the two spaces provided therefor. A blank for such statement and application shall be provided by the custodian of primary records on demand to any person desiring to specially enroll under this section. The mailing of such statement and application from any point within the jurisdiction of such custodian, addressed to such custodian at his office, properly sealed with postage fully prepaid, on or before the day herein provided for filing the same, shall be a sufficient compliance with the requirements of this section.

Upon receiving such statement, the custodian of primary records shall enroll such voter with the said party of his choice in the copy or copies of the register used for party enrollments for the proper election district, in the same manner as upon an enrollment blank deposited at one of the days of registration or on the day of general election; except that above the surname of such voter shall be written the word "Special" and above the Christian name the date of the filing or postmark of mailing of such statement and application. Voters specially enrolled hereunder shall be given by the custodian of primary records an enrollment number beginning, for the first voter thus specially enrolled, with the numeral following the highest enrollment number on the register of those enrolled in the election district at the preceding days of registration or general election. The custodian of primary records shall endorse the corresponding number on the statement of the voter to whom such number is given. All such statements and applications shall be public records and open to inspection and may be

removed by any person. They shall be kept on file for one year from the day of the next ensuing official primary.

Added by L. 1914, ch. 244; amended by L. 1919, ch. 504, in effect Oct. 1, 1919.  
See, generally, *Matter of Wertheim*, (1916), 94 Misc. 691, 158 N. Y. Supp. 321.

**§ 14-c. Special enrollment for certain voters failing to enroll on election or registration days in the year nineteen hundred and sixteen.**

Repealed by L. 1918, ch. 323, in effect April 24, 1918.

**§ 15. Enrollment for a new political party.**

Added by L. 1911, ch. 891, § 16, amended by L. 1913, ch. 587; L. 1919, ch. 504.  
Repealed by L. 1921, ch. 64, in effect March 9, 1921.

**§ 15-a. Special enrollment for soldiers, sailors, marines and certain other persons.**

Any qualified voter of this state who shall have been in the actual military service of this state, or of the United States, in the army or navy thereof, or on any service in connection therewith, and by reason thereof was absent from his or her election district at the times designated for the enrollment of party voters in any year, may become specially enrolled with a party, at any time before the fifth Tuesday preceding an official primary, and have his or her name added to the original enrollment books of the election district in which he or she resides and is a qualified voter, in the manner following: He or she shall make and acknowledge before an officer authorized to take the proof or acknowledgment of deeds to be recorded, and file or cause to be filed with the custodian of primary records a statement embodying a declaration in substantially the following form, the blanks to be properly filled in:

"I, . . . . ., do solemnly declare that I reside at (here insert residence address), and as a resident and duly qualified voter of the . . . . . election district of the . . . . . assembly district (or of the . . . . . ward of the city of . . . . . or

the town of .....), in the county of .....; that I was in the actual military service of this state (or of the United States, as the case may be), in the army or navy thereof, or, on service connected therewith, as (naming the service).....  
....., at the times designated for the preceding enrollment of party voters and by reason of such service was absent at such times from the election district in which I resided; that I have not enrolled with or participated in the primary election of any party on or since the first day of the last registration; that I am in general sympathy with the principles of the ..... party and it is my intention to support generally at the next election, state or national, the nominees of such party for state or national officers. I therefore request that I may be specially enrolled with the ..... party."

The same party name shall be inserted by the voter in the two spaces provided therefor. A blank for such statement and application shall be provided by the custodian of primary records on demand to any person desiring to specially enroll under this section. The mailing of such statement and application, addressed to such custodian at his office, properly sealed with postage fully prepaid, on or before the day herein provided for filing the same, shall be a sufficient compliance with the requirements of this section.

Upon receiving such statement, the custodian of primary records shall enroll such voter with the said party of his or her choice in the original enrollment books for the proper election district, unless it be made to appear to the satisfaction of such custodian that the applicant is not a qualified voter of the election district in which he or she desires to enroll or is already enrolled in an election district, or that the statement as to his or her military or other service or absence is untrue. Such enrollment shall be made in the same manner as upon an enrollment blank deposited at one of the days of registration or on the day of general election; except that above the surname of such voter shall be written the word "special" and above the christian or given name the date of the filing or postmark of mailing of such statement and application. Voters specially enrolled hereunder shall be given by the custodian of primary records an enrollment number beginning, for the first voter thus specially enrolled, with the numeral fol-



lowing the highest number on the enrollment books of those previously enrolled in the election district. The custodian of primary records shall indorse the corresponding number on the statement of the voter to whom such number is given. All such statements and applications shall be public records and open to inspection and may be copied by any person. They shall be kept on file for one year from the day of the next ensuing official primary.

Added by L. 1918, ch. 323; amended by L. 1919, chs. 504, 532, in effect May 10, 1919.

#### § 16. Books to be furnished containing transcripts of enrollments.

The custodian of primary records shall annually provide a true copy, duly certified, for the state superintendent of election- and for each party of so much of the registers as will give the names, addresses and political affiliation of each voter. The said custodian shall, in the month of February each year, deliver one such certified copy to the state superintendent of elections and the chairman of the proper county committee of each such party. Such certified copies shall conform so far as practicable to the form of the columns and entries in the register, or to the portion transcribed, as the case may be. The custodian of primary records shall certify to such chairman that each such copy is a correct transcript from the original enrollments, made during the day- of registration of voters for or at the preceding general election.

Derivation: Formerly § 36. Renumbered and amended by L. 1911, ch. 821, amended by L. 1913, ch. 820, L. 1916, ch. 537, L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3 pt. of subd. 7 as amended by L. 1903, ch. 111, § 5; L. 1905, ch. 674, § 3, and L. 1907, ch. 714, § 1, L. 1908, ch. 456, § 6.

#### § 17. Use of duplicate enrollment books at unofficial primaries.

At all unofficial primary elections of a party, the certified copy of enrollment entries in the register shall be used, and no voter shall be allowed to take part in such primary election as a resident of an election district, unless his name is upon the certified copy of such enrollment entries for that district, showing that he is enrolled with the party in whose primary election he seeks to participate.

**Derivation:** Formerly § 37. Renumbered and amended by L. 1911, ch. 891, § 18; amended by L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, pt. of subd. 7, as amended by L. 1903, ch. 111, § 5; L. 1905, ch. 674, § 3, and L. 1907, ch. 744, § 1; L. 1908, ch. 466, § 6.

**§ 17-a. Unofficial primaries in cities in the year nineteen hundred and eighteen.**

**Added by** L. 1918, ch. 8, in effect Feb. 19, 1918.

**Repealed by** L. 1919, ch. 504, in effect Oct. 1, 1919.

**§ 18. Use of registers at official primaries.**

The copy or copies of the register in which party enrollments are entered shall be used at all official primary elections, and shall be delivered, as provided in this chapter, to the proper boards of election inspectors immediately before the opening of the polls on each official primary day, and shall be returned to the custodian of primary records forthwith, after the completion of the canvass of the votes. Such enrollments, as entered in such register, shall go into effect on the first day of January following days of registration on which they are begun, and shall, with any additions or changes made as herein provided, remain in force until the first day of the following January, when they shall be superseded by the new registers, as herein provided.

**Derivation:** Formerly § 38. Renumbered and amended by L. 1911, ch. 891, § 19, amended by L. 1914, ch. 244; L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, subd. 8.

**§ 19. Right to enroll and vote at primaries.**

No voter who has once enrolled in a political party shall be permitted to enroll in another political party before the first day of the next registration. Only voters enrolled as provided in this article shall be entitled to participate in the official primary elections of their respective parties. No voter shall take part in any primary election of any party other than the party in which he shall at the time be enrolled.

**Derivation:** Formerly § 39. Renumbered and amended by L. 1911, ch. 891, § 20, in effect Nov. 15, 1911. Originally revised from Primary Election Law, § 3, pt. of subd. 9.

**Restrictions upon enrollment.**—In an action by an elector where the complaint shows that the county committee of the party to which he belongs has assumed to delegate to boards in the respective districts and wards of the county, discretionary power to enroll and to strike from the rolls the names



of voters, and thereby prevent voters belonging to the party from voting at its primary election, such elector is threatened with an injury to his political rights which is beyond remedy, and an injunction pendente lite shall be granted. *Brown v. Cole* (1907), 54 Misc. 273, 104 N. Y. Supp. 109.

A member of a political party may maintain a suit to restrain a county committee of that party from carrying out an enrollment system promulgated by it, although he is not a member of the county committee. *Brown v. Cole* (1907), 54 Misc. 273, 104 N. Y. Supp. 109.

Who entitled to enroll, etc.—See note to Election Law, § 7.

### § 19-a. Special enrollment after moving.

If, after being enrolled as a member of a party in one election district, by original enrollment, a voter shall move into another election district in the same county, he may, at any time between the first day of February of any year and the thirtieth day before the annual primary day, become enrolled therein as a member of the same party by making an affidavit before any officer authorized by law to take the same and filing, or causing to be filed, with the custodian of primary records, such affidavit which shall specify the name of the party with which, and the election district in which he is enrolled, the street address from which said voter enrolled, if any, the election district into which he has moved and the street address of his residence therein, if any, and stating that he resides in the last mentioned election district, and desires to be enrolled therein as a member of such party. Except as hereinafter provided, upon the filing of such affidavit the custodian of primary records shall enroll the name of such voter in the copy or copies of the register used for party enrollments for the proper election district, specifying the district from which he is transferred and his new residence address, and shall also make a minute, opposite the entry of his name in the copy or copies of the register used for party enrollments of the election district from which he has removed, showing the election district to which his name is transferred. Provided, however, that in any city or village in which registration of electors is required to be personal, such voter shall appear before the custodian of primary records and deliver such affidavit in person and answer such questions concerning facts affecting his identity as such custodian may deem necessary. Such custodian shall compare the signature, if any, of the voter on the affidavit with his signature on the register of electors. If the voter be unable

to write, the custodian shall submit to him, in lieu of requiring his signature, the questions required for the identification statement where an applicant for registry is unable to write. In a city of over one million inhabitants, if the enrollment of a voter be transferred and if he be able to write, he shall also sign his name in the appropriate column of the register for the district to which he is transferred. In any county of the state, if such a transfer be made, all entries relating to the enrollment of the voter on the original registers, and relating both to registry and enrollment in a city of over one million inhabitants, shall be transcribed in the books for the election district to which he shall have moved. In any election district where personal registration is not required, the custodian of primary records may in his discretion in any case require the applicant to appear in person and answer such questions. Where an applicant for transfer is required either by the provisions of this section or by the custodian of primary records to appear in person, in any political subdivision of the state, such custodian shall not transfer the applicant's enrollment unless satisfied of his identity. Such transfer of enrollment shall be made but once during any year for which the original enrollment was made. Nothing contained in this section shall be deemed to qualify a person to vote at an official primary in the district to which his enrollment is transferred if he be not a resident of such district at the time of the primary and for thirty days theretofore, and he shall be subject to challenge as provided in section seventy-two.

Added by L. 1916, ch. 537; amended by L. 1919, ch. 504; L. 1920, ch. 690, in effect May 21, 1920.

#### § 20. New or amended enrollment lists for changed districts.

If in the interval between the days of registration and the day of the fall primary in the succeeding year, a new election district shall be created, or the boundaries of an election district shall be changed, and such change or the creation of such new district is to take effect within such interval, the custodian of primary records shall immediately prepare new enrollment lists for such district from the enrollment books of the districts covering any part of the same territory, which new enrollment lists shall be made upon register forms and shall include the "primary poll-book" section, if any, of the register, and shall be given the

proper descriptive number of the assembly district or ward, or designation of the town, and the descriptive number of the election district, within which they are to be used but shall in other respects be in the same form and exhibit the same facts as the registers then in force in the territory comprised within such new or changed district and shall contain the names of all the voters, as shown by the registers then in force in such territory, who are the enrolled voters of the respective political parties within, and who are shown by such books to be residents of such new or changed election district. If an election district, whose boundaries are not changed, be given a new number or become included in a different assembly district, ward or town, within such interval, such custodian, before the next official primary at which the registers for such new or changed election district may be used, shall appropriately change the descriptive number on such registers of the assembly district, ward and election district, or the designation of the town, as the case may be. In a city of over one million inhabitants, all original register entries shall be duplicated. The certificate of such custodian to the effect that such new enrollment lists or changed registers are true and correct and in conformity with this section shall be attached thereto. New enrollment lists, prepared pursuant to this section, shall supersede the enrollment lists in the registers then in force in such territory until a new enrollment therein takes effect under the other provisions of this article, and the custodian of primary records shall be charged with the same duties concerning the same, including the preparation of duplicate sets thereof or transcripts therefrom, as are provided in this article with respect to books containing enrollments begun on the days of registration. This section shall not be construed to authorize any person to vote in such new or changed district if he shall have ceased to reside in the territory thereof at the time of the preparation of such new books therefor or at the time he offers his vote at an official primary therein.

Former § 20 repealed by L. 1914, ch. 244; new § 20 added by L. 1916, ch. 537; amended by L. 1919, ch. 504, in effect Oct. 1, 1919.

#### **§ 21. Enrollment entries to be public records; transcripts of enrollment.**

The enrollment entries herein provided for and any declarations filed on enrollment shall be public records, and shall be open

to inspection and copying at any time and by any person. It shall be the duty of the custodian of primary records to certify to the correctness of any transcript of original enrollment entries, or of any part thereof, on the payment of one cent for every twenty names contained in the transcript. Wherever the custodian of primary records is a salaried officer, the fees received by him for certifying such transcripts shall be paid into the public treasury. Such a certified transcript, containing the name and showing the enrollment of any voter, shall be sufficient evidence of such enrollment. The custodian of primary records shall give to any voter enrolled as in this article provided, a certificate of enrollment, which shall specify the name of the party with which he is enrolled, the date of enrollment and the election district in which such voter is enrolled. Declarations and enrollment blanks filed by voters shall be public records and shall be kept on file until one year thereafter. No person shall be required to enroll, nor shall his failure to do so affect his right to register for the purpose of voting at any election.

**Derivation:** Formerly § 41. Renumbered and amended by L. 1911, ch. 831; amended by L. 1913, ch. 820; L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, pt. of subd. 9.

**Consolidators' note.**—The provision relating to acknowledgments is omitted, being already included in the part of this section which has been made section 22; also the provision prohibiting enrollments in another party before the next registration days, which has been included in new section 39; also the provision limiting special enrollments to electors "who registered as electors in the same city or village in the last preceding year, or who have become of age after the last preceding general election, and whose names are not already on the rolls of any party," this provision being inconsistent with that part of old subdivision 4 of section 3 which is here made section 33, and which permits special enrollments in territory formerly not subject to this article but which shall have been annexed to cities or villages subject to it.

**Right to make copies of enrollment books.**—A member of the Republican organization of Erie county is entitled to make a copy of enrollment books, that being included in the right to an "inspection," where, in so doing, he is not taking unnecessary time or interfering with the right of any other member of the party to examine such books. *People ex rel. Spire v. General Committee* (1898), 25 App Div 339, 49 N. Y. Supp. 723.

## § 22. Publication of enrollment.

The board of elections of every city of the first class containing within its boundaries more than one county shall and the board of elections of any county containing a city of the first or second class

and when authorized by the board of supervisors the board of elections in any other county may, in its discretion, cause to be published, for each assembly district, within a county over which such board has jurisdiction, in pamphlet form, and at public expense a transcript of the registers of each election district in the assembly district, omitting all entries except the names, the residence addresses, and the party, if any, recorded opposite the respective names.

**Derivation:** Formerly § 42. Renumbered and amended by L. 1911, ch. 891, § 23; amended by L. 1913, chs. 597, 800; L. 1914, ch. 244; L. 1919, ch. 504; L. 1921, ch. 64, in effect March 9, 1921. Originally revised from Primary Election Law, § 3, subd. 10, as amended by L. 1903, ch. 111, § 6.

### § 23. Judicial review of enrollment.

If any statement in the declaration of any person, on the evidence of which his name was enrolled in the original registers for any election district by the custodian of primary records, or if any entry opposite the name of any person in such registers is false, or if any person so enrolled has died, or has removed from or no longer resides in such election district, any voter of the assembly district in which such election district is located (provided such voter is himself duly enrolled with the same political party with which the person, as to whom the application is made, was enrolled) may present proof thereof by affidavit to the supreme court, or to any justice thereof, in the judicial district, or to a county judge of the county, in which such election district is located. And thereupon such court, justice or judge shall make an order requiring the person against or as to whom the proceeding is instituted, unless he is shown to have died, as hereinafter provided to show cause before such court, justice or judge, at time and place specified in such order, why his enrollment should not be cancelled, or, in case of his death, why it should not be stricken from the register. Such order shall be returnable on a day at



least ten days before a primary election, and a copy thereof shall be served on the person against whom the proceeding is instituted and on the custodian of primary records at least forty-eight hours before the return thereof, either personally or by depositing the same in the post-office of the city in which such election district is located, in a postpaid wrapper or envelope addressed to the custodian of primary records at this office, and to such person by his name at his present address, if known, and otherwise at the address which appears in the registers for such election district. If the person as to whose name the application is made is claimed to be dead, the order to show cause hereinabove provided for shall be directed to the custodian of primary records, and service thereof need only be made upon such custodian of primary records, such service to be made in the manner heretofore in this section specified; but an order requiring the custodian of primary records to show cause why the name of a person claimed to be dead should not be stricken from the register shall not be made unless the affidavit presented to the court, justice or judge by the voter instituting the proceeding shall state that such voter has personal knowledge of the death of the person with respect to whose name the application is made and unless such affidavit is substantiated either by a certificate of the health department or by other competent evidence of such death. The custodian of primary records shall produce before the court, justice or judge, the original enrollment declaration subscribed by the person against or as to whom the proceeding is instituted. The court, justice or judge shall hear the persons interested, and if it appears by sufficient evidence that any statement in the declaration of the person against whom the proceeding is instituted, on the evidence of which he was enrolled by the custodian of primary records, or any statement opposite his name in the columns of the register relating to residence or his qualifications as an elector, is false, or that such person is dead or has removed from or no longer resides in the election district for which he is enrolled, shall order the enroll-

ment of such person cancelled, or in case of his death, that his name be stricken from the register, except as hereinafter provided. If at such hearing the person against whom the proceeding is instituted shall produce evidence that the custodian of primary records has incorrectly copied into the register the data contained in the declaration of such person, and that if correctly copied such person would be entitled to be enrolled in such election district, such order, instead of requiring his enrollment cancelled, shall require the correction of the register in accordance with such evidence. In either case the order shall require the custodian of primary records to cancel the enrollment or strike such name from the register, as the case may be, or to otherwise correct such enrollment books in accordance with such order. Upon the correction of such enrollment books in accordance with such order, the custodian of primary records shall certify such correction to the chairman of the general committee of each party to whom a duplicate set of enrollment lists has been delivered in pursuance of section sixteen of this chapter.

**Derivation:** Formerly § 43. Renumbered and amended by L. 1911, ch. 891, § 24, amended by L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, subd. 11, as added by L. 1904, ch. 350.

**Sufficiency of proof on application to strike name from enrollment.**—The question of the sufficiency of an affidavit, on an application to strike a name from the primary enrollment, is of such public importance that the court will bear the case although the primary election has been held. *Matter of Titus* (1907), 117 App. Div. 621, 102 N. Y. Supp. 851, aff'd 188 N. Y. 585.

Where an elector, served by mail at his latest known address, has failed to appear in a proceeding to remove his name from the roll, and the affidavit showing his removal from that residence given, is not made by a leasee or occupant, janitor or proprietor of the premises but by an occupant of a house in the vicinity, and the affiant has no personal knowledge that the elector has actually moved from the election district as well, but merely states that fact as a conclusion, the affidavit is insufficient although uncontradicted to make it mandatory duty of the court to strike the name from the enrollment. *Matter of Titus* (1907), 117 App. Div. 621, 102 N. Y. Supp. 851, aff'd 188 N. Y. 585.

Although it seems that the Legislature may prescribe such rules and regulations applying to all the primary elections as it deems necessary and proper, yet, when the Legislature has not made adequate provision to protect an elector from having his name stricken from the roll without his knowledge,



the statute should be so construed as to afford him the necessary protection. *Matter of Titus* (1907), 117 App. Div. 621, 102 N. Y. Supp. 851, *aff'd* 188 N. Y. 585.

As to the sufficiency of proof on application to strike name from enrollment, see also *Matter of O'Brien* (1907), 117 App. Div. 628, 102 N. Y. Supp. 845, *aff'd* 188 N. Y. 585; *Matter of McGuire* (1907), 117 App. Div. 637, 102 N. Y. Supp. 856, *aff'd* 188 N. Y. 585.

#### § 24. Correction of enrollment with respect to persons not in sympathy with party.

If any person is not in sympathy with the principles of the political party with which such person is enrolled, any voter of the assembly district in which such election district is located (provided such voter is himself duly enrolled with the same political party with which the person as to whom the application is made was enrolled) may present proof thereof by affidavit to the chairman of the county general committee of the political party with which the voter enrolled, and the chairman of such county general committee shall issue a notice requiring the person against or as to whom the proceeding is instituted to show cause before such chairman of the county general committee, or a subcommittee appointed by such chairman, at a time and place specified in such notice why his enrollment should not be cancelled. Such notice shall be returnable on a day at least fifteen days before a primary election, and a copy of the affidavit shall be served on the person against whom the proceeding is instituted and on the custodian of primary records at least forty-eight hours before the return thereof, either personally or by depositing the same in the post-office of the city in which such election district is located, in a postpaid wrapper or envelope addressed to the custodian of primary records at his office, and to such person by his name at his present address, if known, and otherwise at the address which appears in the register for such election district. The chairman of such committee shall in his discretion personally hear the persons interested in the proceeding or appoint a subcommittee to take testimony, and in such event the action of the subcommittee shall not be final unless approved of by the chairman of such county general committee, and if it appears by sufficient evidence that such person is not in sympathy with the principles of the political party with which such person enrolled, the chairman of the county general committee shall cause

to be filed a certificate with the board of elections or with the custodian of primary records setting forth reasons why the enrollment of such person shall be cancelled, together with a record of the proceedings had in the matter. It shall be the duty of the board of elections or the custodian of primary records to make application to the supreme court or to any justice thereof in the judicial district, or to a county judge of the county, in which such election district is located, for an order requiring the person against or as to whom the proceeding is instituted to show cause before such court, justice or judge, at a time and place specified in such order, why the decision of the chairman of such county general committee should not be confirmed. Such order shall be returnable on a day at least five days before a primary election, and a copy thereof shall be served on the person against whom the proceeding is instituted at least forty-eight hours before the return thereof in the manner hereinbefore provided. The said court, justice or judge shall have power to examine fully into the proceedings taken before such chairman or subcommittee and to receive affidavits or other evidence as to the manner in which such proceedings were conducted, and shall determine whether or not said proceeding was fairly conducted and the finding made therein was made upon sufficient grounds upon the merits, and he may approve or disapprove such finding as shall seem to him to be required to do substantial justice to the party against whom the proceeding was instituted and without regard to technical requirements. The court, justice or judge upon approving of the finding of the chairman of such county general committee shall issue an order to the board of elections or to the custodian of primary records requiring the enrollment of the voter to be cancelled on the registers. A cancellation of enrollment, under this or the preceding section, shall be made by drawing a red ink line through the enrollment number of such person and through the name of the party, and by entering in the "remarks" column, at the extreme right of the register, the word "enrollment cancelled" and the date thereof.

*Derivation:* Formerly § 44 Renumbered and amended by L. 1911, ch. 591, § 25, amended by L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 3, subd. 12, as added by L. 1904, ch. 488, § 1.

**§ 25. Investigation of enrollment.**

Whenever the state superintendent of elections shall require, it shall be the duty of the chief of police and of every captain, in every city of the state to forthwith cause an investigation of each name enrolled in his precinct to be made and to report to the state superintendent of elections, at his office, in such city or at such other office as the state superintendent of elections may in writing designate any case of false enrollment there found. It shall be the duty of the board of elections of the county or of such city to furnish to the chief of police and police captain a printed or typewritten list of the enrolled voters of such city and afford necessary facilities, including clerical assistance, to either such chief of police or police captain, to transcribe the whole or any part of the enrollment list, in aid of the duty of investigation imposed on him under the provisions of this section.

Added by L. 1916, ch. 537, in effect May 15, 1916.

Cross reference.—Office of state superintendent of elections abolished; investigation may be required by board of elections. See p. 261d, post.

## ARTICLE 3.\*

## PARTY ORGANIZATION.

## Section 35. Party committees.

36. State committee.

37. County committee.

37-a. Determining existence of vacancies in county committee in certain cases.

38. Election of members of state and county committees.

39. Formation of committees other than state or county committees; exception.

40. Organization and rules of committees.

41. Review of election of committees.

42. Removal of member of committee.

43. Vacancies in state or county committees.

## § 35. Party committees.

Party committees shall consist of a state committee, county committees, and such other committees as the rules and regulations of the party may provide.

Derivation: Added by L. 1911, ch. 891, and amended by L. 1913, ch. 920, in effect Dec. 17, 1913.

Committees, and rules of parties.—This subject was covered in Election Law, §§ 64 and 65, which were repealed by L. 1911, ch. 891. The following decisions were rendered under those former sections and are given here for whatever historical or other value they may have.

Removal of member of general committee.—The members of a general committee of a political party cannot remove one of their members who has been duly elected as provided in the Primary Election Law, and a member whose removal has been attempted may be restored by mandamus or his attempted removal may be enjoined. *People ex rel Coffey v. Democratic General Committee of Kings* (1900), 164 N. Y. 335, 51 L. R. A. 674, rev'g 52 App. Div. 170, 65 N. Y. Supp. 57, and aff'g 31 Misc. 350, 65 N. Y. Supp. 418.

Where the state committee of the democratic party, which is the executive body of that party in the state, has no constitution or by laws, and is elected by delegates from the respective senatorial districts, and no power resides anywhere to reject their choice, it will be enjoined from expelling, by a majority of said committee, the representatives of senatorial districts in Kings county. *Cummings v. Bailey* (1907), 53 Misc. 142, 104 N. Y. Supp. 283, aff'd 120 App. Div. 892.

Certificate of board of elections as to the election of a member of a county committee is conclusive, and the committee is without power to eject him on the ground that he has not been legally elected. *People ex rel Hahn v. Republican County Committee* (1908), 124 App. Div. 427, 108 N. Y. Supp. 1051, aff'd 192 N. Y. 368.

Power to select an election officer lies in the general committee of a party and the court will not interfere. *Matter of Sheehan v. McMahon*

\* Schedule of sections thus amended by L. 1911, ch. 891, and L. 1913, ch. 820, in effect Dec. 17, 1913.

(1899), 44 App. Div. 63, 94 N. Y. St. Rep. 452, 60 N. Y. Supp. 452, aff'g 28 Misc. 733, 59 N. Y. Supp. 909.

City committee of Democratic party in Albany may fill every office in the committee not held and controlled by the rules of the general committee of the county. *Wallace v. McCabe* (1900), 32 Misc. 336, 66 N. Y. Supp. 696.

A city committee of a political party is a general committee for the city affairs, while the county committee is a general committee for the county affairs. *Matter of Wallace* (1901), 36 Misc. 1, 72 N. Y. Supp. 445.

Effect of amendment of 1901 is to permit a city committee, organized by the members of the general committee of a county, elected from the several wards of the city, to fix the basis of representation of the several wards of the city in the city convention, different from that authorized by the county committee. *Matter of Wallace* (1901), 36 Misc. 1, 72 N. Y. Supp. 445.

Filling vacancies.—A general county committee may adopt a rule providing that a vacancy in that body, created by a resignation of one of its members, shall be filled for the remainder of the unexpired term by a majority vote of the sitting delegates from the assembly district in whose delegation such vacancy occurred. *People v. Republican General Committee* (1901), 63 App. Div. 138, 71 N. Y. Supp. 528, aff'd 168 N. Y. 639.

Where a party convention, owing to a deadlock, fails to nominate a candidate for the office of State Senator, the chairman of the county committee, pursuant to a rule or regulation adopted to provide for such contingency, may call a joint meeting of the members of the county committee of the assembly districts comprising the district affected and of the executive committee of the county committee, and this joint meeting may nominate a candidate for the office. *Matter of Kebor* (1904), 45 Misc. 132, 91 N. Y. Supp. 828, aff'd 87 App. Div. 637.

County and State committees appointed at conventions of political parties to take charge of party affairs have administrative and executive power only. *Brown v. Cole* (1907), 54 Misc. 278, 104 N. Y. Supp. 109.

A political party neither at its conventions nor by any of its committees may directly or indirectly make null the statute prescribing the qualifications of voters at primaries. *Brown v. Cole* (1907), 54 Misc. 278, 104 N. Y. Supp. 109.

Control of county committee.—The county committee of a political party is the agent and servant of the party in the administration of its affairs and is subject to its control and may be sued by any elector whose political rights are unlawfully abridged and interfered with by its action. *Brown v. Cole* (1907), 54 Misc. 278, 104 N. Y. Supp. 109.

A member of a political party may maintain a suit to restrain a county committee of that party from carrying out an illegal enrollment system promulgated by it, although he is not a member of the county committee. *Brown v. Cole* (1907), 54 Misc. 278, 104 N. Y. Supp. 109.

In an action by an elector where the complaint shows that a county committee of the party to which he belongs has assumed to delegate to boards in the respective districts and wards of the county discretionary power to enroll and to strike from the rolls the names of voters and thereby prevent voters belonging to the party from voting at its primary election, such elector is threatened with an injury to his political rights which is beyond remedy and an injunction *pendente lite* should be granted. *Brown v. Cole* (1907), 54 Misc. 278, 104 N. Y. Supp. 109.

Committees, etc., how brought into court.—The provisions of law relating to actions and special proceedings against unincorporated associations are applicable to political parties and to their respective conventions and committees, and they may be brought into court by actions against their officers

as prescribed in section 1919 of the Code of Civil Procedure. *Brown v. Cole* (1907), 54 Misc. 278, 104 N. Y. Supp. 102.

Title to office of general committeeman, it seems, must be tried in a manner similar to that taken in the case of a public officer. *Matter of Hines* (1910), 141 App. Div. 569.

### § 36. State committee.

The state committee of each party shall be constituted by the election from each assembly district of one member who shall be an enrolled voter of the party within said district. Each member of a state committee shall be entitled to one vote.

In case of the death, declination, disqualification, removal from district, or removal from office of a member of a state committee or the failure to elect a member as by reason of a tie vote, the vacancy in such state committee caused thereby shall be filled by the remaining members of such state committee as provided in section forty-three of this chapter.

In the event of a change of the boundaries or designation of assembly districts after the election of members to such state committee, members thereof shall represent for the balance of their term, the district in which they reside, provided there is only one such member resident in such district. If no member, or more than one member, be resident in such district so changed, a vacancy from such district shall be deemed to exist which shall at a meeting, of which every member shall have three days' notice by mail from the chairman of the county committee, be filled by the members of the county committee residing in such assembly district until the next official primary election, at which time such vacancies shall be filled by election in the manner provided in this chapter for the balance of such term.

Added by L. 1911, ch. 891, § 27, amended by L. 1912, ch. 4; L. 1913, ch. 820; L. 1916, ch. 537, in effect May 15, 1916.

In general.—See note to Election Law, § 35.

The state committee is given the power by this section to designate the time and place of holding the state conventions of the party. It is given further authority to fill all vacancies caused by the death, declination, or disqualification of any candidate who is nominated by the state convention or if any certificate of nomination is found to be defective and not wholly valid, the committee has power to make and file a new certificate with the secretary of state. Report of Atty. Gen., 1911, Vol. 2, p. 677.

### § 37. County committee.

The county committee of each party shall be constituted by the election in each election district within such county of at least one member, and of such additional members as the rules and regulations of the party may provide for such district, proportional to the party vote in the district for governor at the last preceding gubernatorial election, or in case the boundaries of such district



have been changed or a new district has been created since the last preceding gubernatorial election, proportionate to the party vote cast for member of assembly at the last preceding general election; and in any county having one million or more inhabitants, where the county committee of any party, by its rules and regulations, is constituted by the election of county committeemen from each election district proportionate to the party vote in such district, an additional member shall be elected at large from each assembly district or aldermanic district in such county, if the said county committee shall by its rules and regulations so provide. If, in any county, no additional members are provided for by rules and regulations, the voting power of each member shall be in proportion to such party vote. In a county in which additional members are so provided for, on the basis of the party vote in election districts, or from assembly or aldermanic districts, each member of the committee shall have one vote. Each member of a county committee shall be an enrolled voter of the party residing in the assembly or aldermanic district from which or in the assembly district containing the election district in which he is elected.

In case of the death, declination (disqualification, removal from district or removal from office of a member of the county committee, or the failure to elect a member, as by reason of a tie vote, the vacancy in such county committee caused thereby shall be filled by the remaining members of such county committee as provided in section forty-three of this chapter.

Added by L. 1913, ch. 820; amended by L. 1916, ch. 104; L. 1917, ch. 703, in effect June 1, 1917.

Only an enrolled voter is eligible as a candidate for election as a member of a county committee, and the question of eligibility may be raised after the election. A person who at the time of the last general election was not of age but subsequently caused himself to be specially enrolled as permitted by § 14b. *ibid.* after the primary election, does not thereby qualify himself to serve. *Matter of Werther* (1916), 94 Misc. 681, 135 N. Y. Supp. 321.

Failure to specify correct number of members of county committee to be voted for. *Matter of Cahill* (1912), 108 Misc. 442, 174 N. Y. Supp. 468.

### § 37-a. Determining existence of vacancies in county committee in certain cases.

The county committee upon its organization after the election of its members at an official primary, may determine when a vacancy or vacancies in such committee shall be deemed to exist by reason of an increase of the number of election districts within the county, occasioned by a change in the boundaries or the formation of one or more election districts which takes effect after such primary election, and may determine the districts which the members so elected shall represent for the balance of their terms; but a member so elected shall represent an election district covering a portion of the territory of the election district for which he was elected. A vacancy so determined shall be filled as provided in section forty-three.

Added by L. 1918, ch. 312, in effect Apr. 23, 1919.



**§ 38. Election of members of state and county committees.**

Members of the state and county committees shall be elected at official primary elections as herein provided for.

Members of the state committee shall be elected biennially in each even numbered year. Members of county committees shall be elected annually.

Members of both committees shall be elected at fall primaries, except that in a year when a president of the United States is to be elected, such members of committees shall be elected at the spring primary. The members of either committee shall hold office until the election of their successors.

Added by L. 1911, ch. 891, § 27; amended by L. 1912, ch. 4; amended and renumbered by L. 1913, ch. 820, in effect Dec. 17, 1913.

In general.—See note to Election Law, § 35; *Matter of Werther* (1916), 94 Misc. 661, 158 N. Y. Supp. 321.

Although the state committee may adopt any laws and regulations relative to its management and control providing they are not inconsistent with the provisions of law and are within the powers given the committee by the state convention, it can adopt no rules relative to the manner of its election. While it has been held that a state committee is the supreme political authority of a party within the state, this is subject to the above limitations. It derives its authority from the convention that creates it subject to law. Report of Atty.-Gen., (1911), Vol. 2, p. 477.

Repetition of names of candidates for members of party committees on ballots.—Where a party organization has selected the assembly district as its unit of representation, the members of the county committee elected by assembly districts become ipso facto members of the judicial, senatorial, congressional, assembly, municipal court, aldermanic, city and borough district committees, and a single appearance of the names of the candidates for the county committee upon the primary ballot is sufficient, except where assembly districts have been subdivided so that they are entitled to representation in two or more of such committees. In such cases it is the duty of the party organization to establish rules, so that in the assembly districts so subdivided the ballot should contain the names of the candidates for membership upon the county committee, and such names should be repeated as often as there are other committeemen to be elected for smaller units than the entire assembly district. *Matter of Koenig v. Brist* (1912), 149 App. Div. 68.

**§ 39. Formation of committees other than state or county committees; exception.**

All committees other than state and county committees shall be formed in the manner provided for by the rules and regulations of the party. The state committee and county committees of a new political party to serve prior to the first official primary for which the members of such party shall have become enrolled also shall be formed in the manner provided for by the rules and regulations of such party.

Added by L. 1913, ch. 820; amended by L. 1921, ch. 479, in effect May 2, 1921.

**§ 40. Organization and rules of committees.**

Every state and county committee, shall within fifteen days after their election meet and organize by the election of a chairman, treasurer and secretary, and such other officers as its rules may provide, and within three days thereafter file with the secretary of state and the board of elections of the county a certificate stating the names and post-office addresses of such officers. Such officers shall be enrolled voters of the party but need not be members of such committees. Each committee may prepare rules and regulations for the government of the party and the conduct of the official primaries within its political subdivision, which may include the payment of dues. Within three days after the adoption of such rules and regulations a certified copy of the same shall be prepared and filed by the secretary with the custodian of primary records for the political subdivision for which such committee is to serve and also a certified copy with the secretary of state. Such rules shall continue to be the rules and regulations for the committee until they are amended or new rules adopted. Such rules and regulations may be amended from time to time by a majority vote of the committee, provided a copy of the proposed amendment shall be sent with the notice of the meeting at which such amendments are to be proposed, such notice to be not less than five days before such meeting, and to be mailed at the post-office address of each member of the committee. Until the adoption of such rules and regulations, the rules and regulations of the existing committee, so far as consistent with this chapter, shall continue to be the rules and regulations of the party for that political subdivision.

Added by L. 1911, ch. 891; amended and renumbered by L. 1913, ch. 820; and amended by L. 1916, ch. 537; L. 1917, ch. 703; L. 1920, ch. 240, in effect April 16, 1920.

In general.—See note to Election Law, § 35.

**§ 41. Review of election of committees.**

The election of members to any party committee may be reviewed by summary proceedings before the supreme court or a justice thereof, as provided for in section fifty-six of this act, upon the petition of any person qualified to vote at the primary election of the party which such committee represents.

Added by L. 1911, ch. 891, and amended by L. 1912, ch. 6, renumbered by L. 1913, ch. 820, in effect Dec. 17, 1913.

Recount unauthorized.—In a proceeding under §§ 41, 56, to review the actions of custodians of primary records the court can review only such action as the custodians themselves have taken and correct errors which they have made. The statute does not authorize a recount of the votes and a declaration of a different result based upon such recount. *Matter of Tenjost* (1915), 169 App. Div. 300, 154 N. Y. Supp. 709; but see *Matter of Tenjost* (1916), 171 App. Div. 129; see note to § 56, post.

**§ 42. Removal of member of committee.**

A member of a party committee may be removed by such committee, for disloyalty to the party or corruption in office, after notice and a hearing upon written charges, to be heard by the committee or a subcommittee thereof appointed for that purpose, which shall report its findings to the full committee. The action of any committee in removing a member thereof as herein provided for may be reviewed in a summary proceeding before the supreme court or by a justice thereof, upon a petition of the person so removed.

Added by L. 1911, ch. 891, and renumbered by L. 1913, ch. 820, in effect Dec. 17, 1913.

In general.—See note to Election Law, § 35.

Failure to enroll, by a member of a county committee, does not create a vacancy. *People ex rel. Boyle v. Livingston* (1919), 106 Misc. 188, 174 N. Y. Supp. 261.

**§ 43. Vacancies in state or county committees.**

Except as otherwise provided in this article, where a vacancy occurs in any state or county committee, such vacancy shall be filled by the remaining members of said committee by the selection of

an enrolled voter of the party qualified for election from the unit of representation as to which said vacancy shall have occurred.

Added by L. 1913, ch. 820; and amended by L. 1916, ch. 537, in effect May 16, 1916.

## ARTICLE 4.

### PARTY NOMINATIONS AND DESIGNATIONS.

Section 45. Nomination of party candidates for public office.

46. Designations; how made.

48. Designations by petition.

49. Filing of designations.

50. Declination by person designated.

51. Certification by secretary of state.

52. Vacancies in designations, how filled.

53. Delegates to national party conventions.

54. Presidential electors.

54a. First nominations by a new political party.

55. Existing state and county committees continued.

55a. Objections to designating petitions.

56. Contests; judicial review.

58. Official primary ballot.

### § 45. Nomination of party candidates for public office.

1. Party nominations of candidates for public office, other than electors of president and vice-president of the United States, to be voted for at a general election by all the voters of the state, and party nominations of candidates for the office of justice of the supreme court, shall be made by party conventions.

2. Party nominations for all other offices to be filled at a general election, except town, village and school district offices and electors of the president and vice-president of the United States, shall be made at the fall primary next preceding such general election by the enrolled voters of the party as in this chapter provided. Nominations of party candidates for town, village and school district offices shall be made in the manner prescribed by the rules and regulations of the county committee of the county wherein such town, village or school district is located. Nominations of party candidates for city offices to be filled at an election held at a

different time from the general election shall be made directly at unofficial primaries by enrolled party voters.

Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820; L. 1914, ch. 2; L. 1921, ch. 478, in effect May 2, 1921.

**Party nominations.**—This subject was covered in Election Law, § 120, which was repealed by L. 1911, ch. 891. The following note given in the 1911 Manual under § 120 is inserted here for whatever historical or other value it may have:

**Application.**—This section applies to all organized parties, and it puts a mere local and isolated party on the same footing as a State party, its local branches, sections and connections. *Matter of Wheeler* (1894), 10 Misc. 55, 30 N. Y. Supp. 834.

**Change of election returns to show that party polled over 10,000 votes.** The court has no power to compel a county board of canvassers to change the returns of a general election so as to show separately the number of votes cast for the office of governor, in the column and under the emblem of a political party whose candidate for the office of governor was the same as that of another political party, in order that it shall appear from the returns whether or not such first nominated political party polled 10,000 votes for State officers. *People ex rel. Boies v. Board of Canvassers* (1903), 79 App. Div. 514, 80 N. Y. Supp. 25.

**Regularity of party nominations.** Where a convention has made one nomination it cannot, while that nomination remains in force, make another. *People ex rel. Simpson v. Police Commissioners* (1894), 10 Misc. 98, 31 N. Y. Supp. 112.

Part of a convention cannot secede from a regular meeting of the nominating party and make nominations on its own account. Nominations must be the act of a party, not of a clique. *People ex rel. Simpson v. Police Commissioners* (1894), 10 Misc. 98, 31 N. Y. Supp. 112.

A candidate cannot claim to be the nominee or representative of a political party unless he has been first regularly nominated by that party, and what constitutes regularity depends upon the usages of the party itself and not upon any rules and regulations which may seem just and proper to courts or judges. *Matter of Redmond* (1893), 5 Misc. 369, 25 N. Y. Supp. 381.

When a political convention has duly nominated and certified a person pursuant to the Election Law its functions are at an end and on the refusal of the nominee to accept the nomination after the certificate is filed, the convention is powerless to reconvene and nominate another person. *Matter of Green* (1907), 121 App. Div. 693, 106 N. Y. Supp. 425.

Where, upon a refusal of a temporary chairman of a convention to call the roll of the certified members of the convention, another convention is held in the same hall upon a roll call, in which a majority of the legal delegates par-



icipate, the nominee of the latter convention will be deemed regular. *French v. Roosevelt* (1896), 18 Misc. 307, 41 N. Y. Supp. 1060.

A convention is *functus officio* when it reassembles after the time for filing original nominations or nominations to fill vacancies caused by declinations has expired. *Matter of Halpin* (1905), 108 App. Div. 271, 95 N. Y. Supp. 411.

Where a political party has no voters in certain territory forming a part of the congressional district it is not fatal to its rights to nominate by a convention for Congress, that it neither advertised nor held primaries in that territory, as such primaries would have been futile if not impossible. *Matter of Ward* (1902), 36 Misc. 727, 74 N. Y. Supp. 403, aff'd 89 App. Div. 613.

**Rescinding nomination before adjournment.**—Any action taken by a city nominating convention may be rescinded by it before final adjournment. *Matter of Nash* (1901), 38 Misc. 113, 72 N. Y. Supp. 1067.

**Factions.**—The word "faction," as used in the Election Law, refers to different political organizations in the same party and not to contending members of the same organization engaged in the support of different candidates who are both seeking or claiming a nomination to office from the same political organization. In *re Heacock* (1896), 13 Misc. 311, 41 N. Y. Supp. 161.

Where there are several factions of the same party in the county, the state convention decides which faction shall have the advantage of regularity. The regular faction then becomes entitled to the sole use of the party emblem for its local candidates. Each local faction can have its own emblem for all its own local candidates, but a local faction, not the regular one, having its own local emblem, cannot place under such emblem the names of the candidates nominated by the party at large for state offices. *Fernbacher v. Roosevelt* (1893), 90 Hun. 441, aff'g 14 Misc. 199, 33 N. Y. Supp. 898.

Courts will not interfere with contents between factions of a political party unless there has not been an adjudication of the question of regularity by some division of the party which is conceded to be superior in point of authority to the one in which the contention arose. *Matter of Pollard* (1892), 55 N. Y. St. Rep. 155, 25 N. Y. Supp. 385.

No other convention or committee than the one nominating has power to review the nominations and to say which of two rival factions presenting delegates from primaries is the regular one. *Matter of Cowie* (1890), 33 N. Y. St. Rep. 710, 11 N. Y. Supp. 838.

A faction of a political party which has certified to the Secretary of State its local nominations only and which has made no nominations for state offices is not entitled to have the nominees of its party for state offices stand in a separate column with its local nominations. *Matter of Madden* (1895), 148 N. Y. 136.

Although a convention fails to nominate for a certain office, electors are not deprived of their right to vote for such office, but may write on their ballots the name of a person to fill such office. *People ex rel. Goring v. President*, 144 N. Y. 616, aff'g 9 Misc. 246, citing *People ex rel. Bradley v. Shaw* (1894), 133 N. Y. 493, 16 L. R. A. 606.

Where a convention fails to nominate a candidate for the office of State Senator, owing to a deadlock, the chairman of the county general committee of the party may call a joint meeting of the county general committee of the Assembly districts comprising the Senate district affected, and of the executive committee of the county general committee, and this joint meeting may nominate a candidate for the office, pursuant to the rule or regulation properly adopted by such general committee. *Mat-*

ter of Kehoe (1904), 45 Misc. 132, 91 N. Y. Supp. 889, aff'd 97 App. Div. 637.

Village nominations made at a primary, notice of which was not subscribed by any committee or officers of the party, are not valid. *Matter of Freund* (1907), 53 Misc. 354, 103 N. Y. Supp. 420.

**Committee defined.**—The word "committee" as used in subdivision 4 of this section need not necessarily be a committee elected at primary election. Hence, where a county committee of the National Progressive party, having adopted rules which provide for unofficial primaries at which delegates are elected to conventions which nominate party candidates in the towns, nominates candidates pursuant to such rules, a writ of mandamus may be issued to the clerk of the town of such county requiring him to receive and file the certificate of nomination of the candidates of such party. *People ex rel. Robinson v. O'Connell* (1913), 155 App. Div. 428.

### § 46. Designations; how made.

Designations of candidates for party nomination by an official primary or for election to party positions shall be by petition only, in the manner provided by this chapter.

Former section 46, as added by L. 1911, ch. 891, repealed and new section added by L. 1913, ch. 820; amended by L. 1921, ch. 479, in effect May 2, 1921. Section cited.—*Matter of Burr v. Voorhis* (1920), 229 N. Y. 382.

### § 47. Meetings of committee for purposes of designation.

Added by L. 1911, ch. 891, and repealed by L. 1913, ch. 820, in effect Dec. 17, 1913.

Notice of meeting of county committee for designation of candidates must be served upon all the committee members except such as may have been removed and a meeting was not duly organized where four members had not been notified even though a majority were present and acted. *Matter of Akin* (1913), 149 App. Div. 950.

### § 48. Designations by petition.

1. Every petition for the designation of a candidate for party nomination or for election to a party position shall be in substantially the following form:

I, the undersigned, do hereby certify that I am a duly enrolled voter of the ..... party, as herein below specified, and entitled to vote at the next primary election of said party, that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person, or persons, as a candidate, or candidates, for nomination by the ..... party for public office, or offices, or as a candidate or candidates for election to the position or positions, of the said party to be voted for at the official primary election to be held on the ..... day of ....., A. D., ....., as herein-after specified, and it is my intention to support at the ensuing primary the candidacy of the person or persons and each of them herein designated by me.

Name of candidate.	<del>Enrollee</del> or party position.	Place of residence.	Place of business.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

I do hereby appoint (here insert the names and addresses of at least three persons all of whom shall be enrolled voters of said party) as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand the day and year placed opposite my signature.

Date.	Name of signer.	Residence.	Election district, town or ward.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

State of New York, }  
County of ..... } ss.:

On this ..... day of ..... in the year ..... before me personally came (here shall be inserted the names of each and every voter appearing and making oath before the said officer) each of whom was to me personally known and known by me to be the voter whose name and place of residence is subscribed by him to the foregoing certificate and each of the foregoing voters being by me duly and severally sworn did make oath that he is a voter and has truly stated his residence, and that it is his intention to support at the polls the candidacy of the person or persons designated for nomination for public office in the foregoing certificate of designation, if the same are nominated.

(Signature and official title.)

2. Any signature to a designating petition for the primary may as an alternative be authenticated by a qualified witness in the same manner as in the case of a nominating certificate for the election, as provided in section one hundred and twenty-three of the election law, the forms and procedure being changed to apply to the primary instead of the election, and with like penalty for any false affidavit, certificate or statement by any person. No signature to a designating petition shall be counted unless authenticated either by acknowledgment or by a witness as aforesaid.

3. A petition for the designation of candidates for party nomination or for election to party position may designate candidates for nomination for one or more public offices, or for election to one or more party positions, or both.

4. Petitions for the designation of candidates for party nominations or for the election of candidates to party positions or both shall be signed by enrolled voters resident within the political subdivision or unit of representation for which the nomination or election is to be made to a number equivalent to not less than three per centum of the total number of enrolled voters of the party residing within said political subdivision or unit of representation, as determined by the last preceding enrollment, provided, however, that for the following public officers the number of signatures need in no case exceed the following fixed limits:

For the office of judge of the court of general sessions in the city of New York and judge of the city court of the city of New York, fifteen hundred signatures;

For any office to be filled by all the voters of a city containing more than a million inhabitants, fifteen hundred signatures;

For any office to be filled by all the voters of any other city of the first class or of any county or borough containing more than two hundred and fifty thousand inhabitants, according to the last preceding federal or state enumeration, one thousand signatures;

For any office to be filled by all the voters of any county or borough containing more than twenty-five thousand and not over two hundred and fifty thousand inhabitants according to the last preceding federal or state enumeration, or of any city of the second class, or of any congressional or senatorial district, five hundred signatures;

For any office to be filled by all the voters of any other county or of any city of the third class or of any assembly district, two hundred and fifty signatures.

For any office to be filled by the voters of any political subdivision contained within another political subdivision, not to exceed the number of signatures required for such larger subdivision; and for any office to be filled by the voters of a subdivision containing more than one assembly district, county or other political subdivision, not to exceed the aggregate of the signatures required for the subdivisions or parts of subdivisions so contained.

5. The number of signers on a petition to designate a candidate or candidates for the position of delegate or alternate to a state or judicial district convention, or member of the state committee, need not exceed the number required for a petition to designate a candidate for member of assembly.

6. All papers signed and verified in the manner and form above prescribed for the purposes of designating the same candidate for nomination for the same public office or the same party position shall, when bound together and offered for filing as provided in this chapter, be deemed to constitute one petition with respect to said candidate.

No enrolled voter shall join in designating a greater number of candidates for party nominations for a public office or for election

to a party position than the number of persons to be elected thereto. Where an enrolled voter shall sign any petition or petitions designating a greater number of candidates than he is permitted to designate as aforesaid his signatures, if they bear the same date, shall not be counted, and if they bear different dates they shall be counted in the order of their priority of date and only so far as he was entitled to make designations. A signature made earlier than eleven weeks before the official primary shall be void and of no effect; but if bearing a date within such period it shall be counted in the first instance by the board or officer with which or whom the petition is offered for filing, subject to judicial review if objections be filed under section fifty-five-a of this chapter.

*Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820; L. 1915, ch. 675; L. 1916, ch. 537; L. 1917, ch. 703, 725; L. 1921, ch. 479, in effect May 2, 1921.*

**Defective petition.**—A petition purporting to designate persons as independent candidates for county and ward committeemen is *invalid* where it fails to state the time of holding primary election, the ward or city committee for which the candidates are designated, the place of residence of the candidates or the signers and the certificate of a knowledge does not contain the names of the latter. *Matter of King (1913), 135 App. Div. 720.*

**Amendment of defective petition.**—Where a petition for the designation of an independent candidate is defective and the time to file such petition has expired a justice of the Supreme Court has no power to allow an amended petition to be filed *after the time.* *Matter of King (1913), 135 App. Div. 720.*

**Section cited.**—*Matter of Burr v. Voorhis (1920), 229 N. Y. 342.*

#### § 49. Filing of designations.

1 Where to be filed. All designations of candidates for offices and for election to party positions shall be filed with the officer with whom independent certificates of nomination for such office or offices are required by this chapter to be filed. All designations filed in accordance with the provisions of this section or certified copies thereof shall forthwith be conspicuously posted by the secretary of state or custodian of primary records in his office, and shall remain so posted until primary day, and shall be open to inspection as public records at all reasonable hours, and each such officer shall provide ample and sufficient facilities for keeping and posting said records and for making copies of the same. Forthwith upon the filing of a petition, designating a person for nomination to public office, the board or officer with whom the same is filed shall mail notice thereof to each person named as a candidate for nomination to such office in such petition.

2 When to be filed. All designations shall be filed not earlier than the fifth Tuesday and not later than the fourth Tuesday preceding the primary at which the candidates therein designated are to be voted for. All designations shall at the time of the filing thereof be stamped or indorsed by the secretary of state, or the custodian of primary records, as the case may be, with the day, hour and minute of such filing.

*Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820; L. 1914, ch. 344; L. 1916, ch. 537, in effect May 15, 1916.*

#### § 50. Declination by person designated.

The name of a person designated as a candidate for nomination for party position shall not be printed on the official ballot if he notifies the officer with whom the original certificate of his designation is filed in a writing signed and duly acknowledged by him that he declines the designation. Such declination, to be effective, must be filed within three days after the third Tuesday preceding the ensuing primary. The officer with whom such declination is filed shall forthwith inform by mail or otherwise the committee authorized to fill vacancies in designations, and if such declination be filed with the secretary of state, such officer shall also give immediate notice by mail or otherwise of such declination to the several custodians of primary records for the election districts affected by such declination. The vacancy created by such declination shall be filled not later than the second Tuesday preceding the primary election.

If a candidate designated for nomination does not decline the designation within the time hereinbefore mentioned, and he is thereafter nominated at



the official primary election his name shall be printed on the official ballot as the candidate of the party or body holding the primary, and he shall not be permitted to decline such nomination.

Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820; L. 1914, ch. 244, L. 1917, ch. 703, in effect June 1, 1917.

No authentication of the notary's certificate is required where the declaration is filed with the secretary of state. *Matter of Travis* (1918), 184 App. Div. 303, 171 N. Y. Supp. 1052, *affd.* 234 N. Y. 598.

### § 51. Certification by secretary of state.

The secretary of state shall, not later than the second Thursday before an official primary election, except a primary election held to nominate candidates to be voted for at a special election, prepare and transmit to the several custodians of primary records within the political subdivisions where the candidates, designations of whom have been duly filed with him are to be voted for, a certificate setting forth the names and residences of such candidates and the titles of the offices for which they are named, and the name of the party upon whose primary ballot their names are to be placed, and the order in which such candidates' names are to be printed under the title of an office or party position, and the order of groups of candidates for the same position, if any.

Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820, and L. 1914, ch. 244, in effect Apr. 8, 1914.

### § 52. Vacancies in designations, how filled.

If a candidate regularly designated for election to party position, or for a party nomination for public office, declines a designation or dies before the primary day, or is found to be disqualified to hold the office or position for which he has been designated, the committee to fill vacancies, if any, which may be appointed by the signers and shown upon the face of the petition of designation, may make a new designation, to fill the vacancy so created, by making and filing with the officer with whom the original designation was filed a certificate setting forth the cause of the vacancy, the name of the person designated by them, the name of the original candidate, and the name of the party for whose primary the original designation was made. Such certificate shall be subscribed and acknowledged by a majority of the members of the committee to fill vacancies, who shall severally make oath that the matters therein stated are true, to the best of their knowledge and belief, and when so filed such certificate shall have the same force and effect as the original designating petition. In case such certificate shall be filed with the secretary of state, he shall forthwith certify to the proper custodian, or custodians, of primary records the name of the person designated by such certificate and such other facts as are required to be stated therein. In case the certificate from the secretary of state shall be received by a custodian of



primary records, or an original certificate of designation as in this section provided for shall be filed with him, after the official ballots have been printed and before primary day, it shall be his duty to prepare and furnish to the inspectors of election in each election district affected adhesive pasters containing the name of the candidate designated to fill the vacancy with directions for the proper use thereof. The pasters shall be of plain white paper, printed in plain black ink and in the same kind of type used in printing the names of the candidates upon the official ballots, and shall be of a size as large as and no longer than the space occupied upon the official ballot by the name of the candidate in whose place the candidate named upon the paster has been designated. Whenever such pasters are provided, the officer or board furnishing them shall certify, to the inspectors of election in the election districts affected by the vacancy, the name of the person originally designated, the name of the person designated in the new certificate, the title of the office or party position for which the designation is made, the name of the political party to which the committee making the designation belongs, and shall state the number of pasters furnished, which number shall be equal to the number of official ballots furnished for each such district. Upon the delivery of said pasters the inspectors of election shall sign and receipt for the same, which receipt shall be retained by the officer or board furnishing the pasters, and shall be part of the record of his or their office. The inspectors shall affix one of such pasters in the proper place and in a proper manner upon each official ballot before such ballot shall be delivered to a voter. When so affixed to an official ballot the paster shall be a part of the official ballot. The inspectors shall include in their statement of ballots a statement showing the number of pasters received by them, the number of pasters affixed to official ballots and the number of unused pasters returned by them, the unused pasters to be inclosed in the package of ballots not delivered to voters. The use of any paster upon the official ballot otherwise than as herein provided is hereby prohibited.

Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820, in effect Dec. 17, 1913.

The court has power to determine the eligibility of a candidate to the office of member of assembly. The hundredth day previous to the general election to be held November 8, 1917, being Sunday, the resignation on the following day of a candidate for member of assembly from a city office is too late, and it is the duty of the board of elections of the county, under section 52 of the Election Law, to recognize the substitute petition designating another for the office of member of assembly. *Matter of Bewley* (1917), 101 Misc. 248, 106 N. Y. Supp. 830.

No authentication of the notary's certificate is required where the papers are filed with the secretary of state. *Matter of Travis* (1918), 194 App. Div. 205, 171 N. Y. Supp. 1052, *affd.* 224 N. Y. 593.

#### § 53. Delegates to national party conventions.

The rules and regulations of each political party may proscribe that the delegates and alternates to a national convention of that party shall be

elected from congressional districts, or partly from the state at large and partly from congressional districts but such rules shall not provide for the election of more than four delegates and four alternates from the state at large. Delegates and alternates from the state at large shall be elected at a state convention to be constituted, held and conducted in the manner provided by this chapter for state conventions for the nomination of party candidates for public office to be voted for by all the voters of the state.

In each year when a president of the United States is to be elected, district delegates and alternates, to national party conventions and delegates and alternates to such a state convention shall be elected at the spring primary. Candidates for the position of district delegate and alternate to such national party convention shall be designated by petition containing signatures sufficient, as prescribed by this chapter, for the designation of candidates for party nominations for the office of representative in congress. The time for filing designations for district delegates and alternates to a national convention, or delegates and alternates to such a state convention, shall be computed with respect to the spring primary instead of the fall primary.

Added by L. 1911, ch. 891, and amended by L. 1912, ch. 4, L. 1913, ch. 820, L. 1921, ch. 479, in effect May 2, 1921.

The law gives the party the right to designate the unit of representation upon the state committee and for delegates to the national convention. It may decide that the unit of representation shall be the congressional district or the entire state, or it may decide that the unit of representation shall be in part the congressional district and in part the state. Report of Atty. Gen., 1911, Vol. 2, p. 671.

Order on ballot of names of candidates for delegates to national convention.—Since there is no direction in the Election Law as to the order in which names of candidates for delegates to the national convention shall be placed upon the ballot, the court has no power to interfere with the acts of the boards of elections. Matter of Dwell (1912), 149 App. Div. 690.

#### § 54. Presidential electors.

In each year when a president of the United States is to be elected, candidates for the office of elector for president and vice-president of the United States shall be nominated by the state committee of each of the parties to which this act applies, one for each congressional district, and two at large. The candidates so nominated shall be certified to the secretary of state in the same manner as party nominations for state offices.

Derivation: Added by L. 1911, ch. 891, § 29, in effect Nov. 15, 1911.

#### § 54a. First nominations by a new political party.

When an independent body shall have become a party at a general election, nominations of such party for all offices to be filled at the first general election thereafter, and at any election held prior to such first general election, may be made in such manner as the rules and regulations of such party may prescribe, notwithstanding the provisions of section forty-five of this chapter. A certificate of such nominations, containing the title of the office for which each person is nominated, the name and residence of each such person, a representation of the device or emblem selected to designate and distinguish the candidates of such party, and, if in a city, the street number of the residence of each such candidate and his place of business, if any, shall be signed and duly executed by the chairman and secretary of the body making such nominations, which certificate shall be filed with the board or officer with which or whom an independent certificate of nomination for the same office is required by law to be filed. If it be an office for which party nominations are made by other parties at the fall primary, it shall be filed not later than such day. In any other case it shall be filed not later than the time prescribed by law for filing party certificates of nomination. The certificate may appoint a committee of not more than three electors to fill vacancies. The name of each person so nominated, or nominated by such committee, shall be printed upon the official ballot at the election, together with the name and emblem of such new party. No board or officer shall receive for filing any such certificate of nomination unless a copy of the rules and regulations of such party, describing the rules-making body, also shall have been filed in its or his office. If there be any question or conflict relating to the rules and regulations or to the rule-making body, rules and regulations which a majority of the candidates of such party for offices to be filled by all the voters of the state, nominated by independent certificate and voted for at the general election at which it became a party,

shall certify to have been duly adopted by a convention, committee or body thereto authorized, describing it, shall be controlling.

Added by L. 1921, ch. 84, in effect March 9, 1921.

### § 55. Existing state and county committees continued.

Party state and county committees now existing shall continue until their successors are elected as provided for in this act.

Added by L. 1911, ch. 391, and amended by L. 1912, ch. 4, and L. 1913, chs. 3-7, 320, in effect Dec. 7, 1913.

**Designation by existing committee.**—As to designation of candidate for state committee by existing committee at time of enactment of this section, see *Matter of Trombley* (1912), 150 App. Div. 415.

**Vote by proxy.**—Where the rules of a party committee, appointed before the statute authorizing committee designations was enacted, permit members to vote by proxy, they may do so and designations made on votes so cast are valid. *Matter of Danlei* (1912), 149 App. Div. 777.

### § 55a. Objections to designating petitions.

A written objection to any petition for the designation of a candidate for party nomination or for election to party position may be filed with the board or officer with whom the original petition is filed within three days after the filing of such petition. If such objection be filed, notice thereof shall be given forthwith by mail to the committee, if any, appointed on the face of such petition for the purpose specified in sections forty-eight and fifty-two of this chapter, and also to each candidate designated by such petition. The question raised by such written objection shall be heard and determined as provided in section one hundred and twenty-five of this chapter. The supreme court, at special term, in any judicial district in which two or more proceedings are pending in such district under the provisions of this section may, by order, consolidate all such proceedings and provide that further proceedings therein be had before such court at special term, in all cases where the question of questions involved are identical. If one or more of such proceedings be pending before a justice or county judge, notice of such order shall be forthwith given to such justice or judge.

Added by L. 1913, ch. 320, and amended by L. 1914, ch. 214, in effect Apr. 5, 1914.

**Time of raising objection.**—The question of eligibility may be raised after the election. *Matter of Werber* (1919), 25 Misc. 681, 158 N. Y. Supp. 211.

Objections to a petition of a candidate for the nomination of alderman must be filed within the three days following the filing of the petition. *Matter of Gallo* (1919), 108 Misc. 442, 177 N. Y. Supp. 732.

### § 56. Contests; judicial review.

Any action or neglect of the officers or members of a political convention or committee, or of any inspector of primary election, or of any public officer or board with regard to the right of any person to participate in a primary election, convention or committee, or to enroll with any party, or with regard to any right given to or duty prescribed for, any voter, political committee, political convention, officer or board, by this article, shall be reviewable by summary proceedings upon the petition of any person aggrieved thereby, or upon a petition presented by the chairman of any political committee, when summary proceedings may be instituted before the supreme court or a justice thereof within the judicial district where the transaction, act or neglect of duty took place. Such proceedings shall be heard upon such notice as the court or justice thereof shall direct. In reviewing such action or neglect, the court, justice or judge shall consider but need not be controlled by, any action or determination of the regularly constituted party authorities upon the questions arising in reference thereto, and shall make such decision and order as, upon all the facts and circumstances of the case, justice may require. For the purposes of this section, service of any notice or order or other process of the court or justice thereof upon the chairman or secretary of a convention or committee or board whose action is sought to be reviewed or directed shall be sufficient. The action of any custodian of primary records in canvassing and certifying the result of any primary election or preparing and certifying the list of delegates and alternates, if any, to a judicial district convention for a district wholly within the jurisdiction of such court or of the secretary of state in preparing and certifying the list of delegates and alternates to any convention or members of a state committee, may be reviewed in like manner by the supreme court, or a justice thereof, which by order may make any change in the result of such primary election as certified to by the custodian of primary records, or any change or alteration in the list of delegates and alternates to a judicial district convention prepared by a

custodian of primary records or in the list of delegates and alternates to any convention or members of a state committee prepared by the secretary of state, as justice may require. The change or alteration so made, if the result is as to the nomination of a candidate for an elective office, the name of the person so adjudged to have been duly nominated in accordance with the provisions of this chapter at such primary for such elective office shall be placed upon the official ballot as the candidate for the party holding such primary; and any change or alteration so made by the court or justice thereof in the statement of the list of delegates and alternates shall be included in the statement of the list of delegates and alternates to be certified by the secretary of state or custodian of primary records to the chairman or secretary of the committee empowered by party rules and regulations to call the convention to which such delegates and alternates are elected. Proceedings taken under this section shall have precedence and priority over all other actions and proceedings in the supreme court or before a justice thereof. The court, or a justice thereof, upon such proceeding, shall have the right to subpoena and examine witnesses, or in its discretion to hear and determine the case upon affidavits. In case the court or a justice thereof should find and determine that both parties to the controversy had been guilty of frauds or that the primary has been so permeated by fraud as to render it impossible for him to determine the true result of such primary and who was elected thereat, such court or justice shall have the right to direct the holding of a new primary at the same place and in the same manner as the regular official primary, or in case of a contest over the result of a convention, which has been characterized by such frauds and irregularities as to render it impossible for such court to determine who was rightfully nominated at such convention, to direct the reassembling of such convention upon a date to be fixed by such court or justice for the purpose for which such convention was originally convened. The court or justice thereof, in case of ordering a new primary, may include in such order directions for the canvassing of the vote of such new primary, and in the case of ordering a new convention the order shall contain directions to the proper party officials as to giving notice to each delegate and alternate delegate to such original convention of the time and place for reassembling the convention. The time fixed by this chapter for filing the certificate of nomination of any candidate for public office nominated by the convention or for filing declarations or filling vacancies, shall be subject to the power of the court or justice to fix a later day if the reassembling of the convention be ordered.

No court or justice shall have jurisdiction of a proceeding, under this section, to review the action of any custodian of primary records in canvassing and certifying the result of a primary election, or of the secretary of state in preparing and certifying the list of members of a state committee, unless the proceeding be instituted on or before the tenth day next following such primary election; and the final order at special term, in any such proceeding, must be made on or before the fifteenth day after such primary election.

Added by L. 1911, ch. 891; amended by L. 1912, ch. 820; L. 1918, ch. 306; L. 1921, ch. 479 in effect May 2, 1921.

**Legal proceedings against officers of conventions, etc.**—The provisions of law relating to actions and special proceedings against unincorporated associations are applicable to political parties and to their respective conventions and committees, and they may be brought into court by actions against officers as prescribed in section 1019 of the Code of Civil Procedure. *Brown v. Cole* (1907), 54 Misc. 278, 109 N. Y. Supp. 100.

**Power of court.**—The Supreme Court may set aside the statement of a canvass of votes cast at a primary election fraudulently made by a board of inspectors, adjudge the true result, and direct the board to reconvene and make and file a statement of the result as so adjudged, and direct the issue of certificates of election to the candidates lawfully elected. *Matter of Rabbit v. Garud* (1900), 89 App. Div. 119 3 N. Y. Supp. 473.

This section does not allow the striking from the official ballot the names of candidates for office because of errors and omissions in the party proceedings preliminary to their nomination, but is limited to corrections of errors and omissions in the primary proceedings, and does not extend to the correction of ballots. *Matter of Cragg* (1907), 12 App. Div. 921.

In the city of New York the enrollment books, as made up under the Primary Election Law of 1900 from the enrollments made on the four regular registration days for a general election, must stand for one year and cannot



be amended or changed by judicial action, although in the meantime an enrolled voter may have died or moved out of the election district in which he had enrolled. *People ex rel. Moscovitz v. Voorhis* (1903), 41 Misc. 280, 84 N. Y. Supp. 845, 14 N. Y. App. Cas. 15.

This section confers on the court broad summary power to correct fraudulent practices and to compel fair conduct at primary elections, and the court in a proper case has power to set aside summarily a fraudulent primary election and to order a new election, but the exercise of the power rests in its sound discretion and it will not act to correct illegalities in a primary election where the only effect thereof was to increase the majority of a candidate who would have been elected irrespective of the fraud. *Matter of Coughlin* (1910), 127 App. Div. 233, 121 N. Y. Supp. 960, aff'd 166 N. Y. 613.

The power given to the courts by this section to review any action or neglect of officers, committeemen or board by mandamus, certiorari or summary jurisdiction, is confined to such matters as were within the jurisdiction of the board whose action is being reviewed. *Matter of Hines* (1910), 141 App. Div. 500.

The court will not interfere with an election because of alleged void ballots not changing result. *Matter of Hines* (1910), 141 App. Div. 500.

A justice of the Supreme Court has no power, in a proceeding to review the action of inspectors of a primary election under this section, to enjoin a person to whom certificate of election to the county committee of a political party has been issued, from participating in the meetings of the committee. The court possesses and should attempt to exercise only such power to interfere with the conduct of primary elections as is conferred by statute. *Matter of Helle* (1914), 160 App. Div. 360.

While in a summary proceeding under this section to review the action of any custodian of primary records in canvassing and certifying the result of a primary election the court may make any change in the result of such primary election as is certified to by the custodian of primary records. It will not interfere until it is shown that the action of the custodian in canvassing and certifying the result is fraudulent, erroneous or in violation of some duty or responsibility imposed by law.

It seems that the proper proceeding for petitioners to free out his title to the office would be by an appropriate action, the statute providing as a preliminary thereto for an examination of the ballots cast, if so desired. *Matter of Sherman* (1915), 83 Misc. 680.

A justice of the Supreme Court sitting in chambers cannot review the action or alleged neglect of the mayor of a city in appointing certain election officers in such city under the authority granted by the above section. The designation of election officers is in accordance with section 12, now § 107, of the Election Law, and the summary jurisdiction given to justices in the above section only relates to the review of the action or neglect of a public officer or board with regard to a right given or duty prescribed by the Primary Election Law. *Matter of McSonne v. Murphy* (1902), 86 App. Div. 566, 83 N. Y. Supp. 1014.

**Mandamus to compel recognition as member of committee.**—An application for a peremptory writ of mandamus to compel the general committee of a county to recognize the relator as a member, and also to recognize as a member of the executive committee the person chosen by the relator and his associates is properly denied where the relator has not been denied his rights as a member of the general committee, the person chosen is not named, no demand is made that any special person should be recognized, and no one has made any demand for such recognition. *People ex rel. Garvey v. Democratic Committee* (1903), 175 N. Y. 415, aff'd 82 App. Div. 173, 89 N. Y. Supp. 744.

**Correction of mistakes.**—This section cannot be invoked to review an election from consequences of his own action or neglect. *People ex rel. Smith v. York* (1901), 34 Misc. 120, 68 N. Y. Supp. 741.

An elector who by mistake, wrote his name in the wrong party column, when enrolling for the primaries, is not entitled, under this section, to an order requiring the police board to correct the mistake. *People ex rel. Smith v. York* (1901), 34 Misc. 120, 68 N. Y. Supp. 741.

**Review of action of custodian of primary records.**—The duty imposed upon a custodian of primary records to deliver a certificate of nomination to the person who is shown to have been nominated by the statement filed in his office is ministerial and not judicial. He cannot receive or act upon evidence tending to explain away or contradict such statement. The court cannot, in proceedings brought under the above section to review the action of the custodian in respect to such certificate, receive or consider such evidence. *People ex rel. Caliban v. Hunt* (1902), 75 App. Div. 33, 77 N. Y. Supp. 973.

**Process, on whom should be served.** *Matter of Hines* (1910), 141 App. Div. 500.

**Mandamus does not lie to compel the board of elections of the city of New York to enroll a voter in the Republican party where through his own mistake he unintentionally placed his mark in the Democratic circle on the enrollment blank.** *Matter of Jackson v. Britt* (1911), 147 App. Div. 37, 131 N. Y. Supp. 877.

Application of section. *Matter of Joslin* (1911), 73 Misc. 354, 132 N. Y. Supp. 418. This section applies only to the official acts of the board and to matters of which it has jurisdiction. It gives the court no power to correct mistakes made by the electors themselves. *Matter of King* (1913), 155 App. Div. 731.

The court possesses and should attempt to exercise only such power to interfere with the conduct of primary elections as is conferred by statute. *Schlesinger v. Britt* (1912), 150 App. Div. 506. Affirmed 206 N. Y. 677.

The right of review given by this section is summary and the section should not be so construed as to render it ineffectual. *Matter of Trombley* (1912), 150 App. Div. 415, appeal dismissed, 200 N. Y. 832.

Limitation on power of court. — This section confers power to entertain summary proceedings upon the specified courts only in cases of erroneous action on the part of the public officials therein specified. It does not give power to the courts to correct mistakes made by the elector himself. *Matter of Jackson v. Britt* (1911), 147 App. Div. 87, 131 N. Y. Supp. 877.

Primary elections; cancellation of certificate of nomination. — Petition asking the cancellation of a certificate of nomination issued by the Secretary of State, allowing the nomination of one B. by the Socialist party as justice of the Supreme Court. Said B. was not a member of the Socialist party and two of the six votes cast for him bore the name of his son, a law student. On the contrary, one S., a member of the Socialist party, received five votes. Held, that the plurality of votes cast for the office of justice of the Supreme Court at said election were cast for S. and that the certificate showing the nomination of B. should be canceled. *Matter of Sweeney* (1913), 155 App. Div. 490.

Alteration of primary election returns. — The power of review vested in the court under this section does not authorize an alteration of the return of the inspectors of a primary election where, except in a single trifling particular, it is in record with the votes cast. *Matter of Zimmer* (1912), 76 Misc. 330.

When review premature. — The power of the court under this section, which must be strictly construed, does not extend to the review of threatened acts and while the court may make any change in the result of a primary election as certified to by the custodian of primary records, a proceeding against him under this section before a certificate of election has been issued is premature. *Matter of Zimmer* (1912), 76 Misc. 330.

Counting ballots for candidate variously named. — Where it appears from the primary record that every ballot cast for the petitioner who was variously named upon the ballot had been counted for him he would have been elected, the supreme court under this section may declare his election. *Matter of Zimmer* (1912), 77 Misc. 330.

Neglect of inspectors of primary elections. — The action or neglect of inspectors of primary elections in the performance of their duties, as prescribed in article 4 of the Election Law, is subject to review under this section. *Matter of Ward* (1912), 78 Misc. 15.

Opening of ballot boxes and enrollment books examined. — Where it is probable that occurrences in relation to the statement of the result of the canvass of the vote for senator were due to ignorance and neglect in the performance of duty by certain of the inspectors of primary election the court will order the ballot boxes opened, the enrollment books examined, the true result ascertained, the boards of inspectors of election to reconvene and make and file a statement of said result and a certificate issued to the candidate lawfully elected. *Matter of Ward* (1912), 78 Misc. 15.

Recount unauthorized. — In a proceeding under sections 41, 56 to review the actions of custodians of primary records the court can review only such action as the custodians themselves have taken and correct errors which they have made. The statute does not authorize a recount of the votes and a declaration of a different result based upon such recount. *Matter of Tenjoost* (1915), 100 App. Div. 200, 154 N. Y. Supp. 704.

The removal of the chairman of a county committee and the election of a successor by the members of the committee do not come within the provisions of this section, and the court is without jurisdiction to review the proceedings of the committee. *Matter of Ganley* (1915), 90 Misc. 445, 154 N. Y. Supp. 773.

Review of primary election; powers of court. — But where the inspectors of election have been made parties to the proceeding the court has power to order the custodians of primary election records to produce ballots cast for rival candidates for the position of state committeeman for examination and recanvass if the correctness of the original canvass has been challenged, and may provide that the rival candidates may be present in person and by counsel, and that examination shall be made in the presence of the custodians of the records, or employees of their department designated by them, and that the election inspectors may likewise be present in person or by counsel.

It is not necessary that a separate proceeding be taken against the officers of each election district, but there may be one proceeding against all the officers of the several districts, where each contributed to a result alleged to be incorrect. *Matter of Tenjoost* (1915), 171 App. Div. 120.

## § 57. Emblems.

Added by L. 1911, ch. 891, and repealed by L. 1913, ch. 820, to effect Dec. 17, 1913.



**§ 58. Official primary ballot.**

There shall be prepared, printed and supplied in the manner hereinafter provided, for use at official primary elections, official primary ballots, and except as otherwise expressly provided in this chapter, no other ballot shall be used at an official primary election.

No names of candidates for any nomination to public office or election to a party position shall be printed upon the official primary ballot, except upon designation duly made as prescribed in this chapter; nor shall any names, words, or signs, or writing whatever be printed, written, stamped or in any manner placed upon an official primary ballot except as herein provided.

The official primary ballots shall conform in quality, weight, and style of printing, to the ballots prescribed in this chapter for use at the general election, excepting that the title of the party position or office shall be printed in a space three-eighths of an inch in depth, and the name of the candidate therefor shall be printed in a space one-fourth of an inch in depth, instead of one-half inch. The ballots of no two parties shall be of the same color. The secretary of state shall designate the color of ballots for each party. The ballot shall be printed upon the same leaf with the stub and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot, and shall be of sufficient depth to allow the following instructions to voters to be printed on the face thereof in type known as brevier, with the word "Instructions" in larger type above:

"This ballot must be marked with a pencil having black lead. To vote for any candidate whose name is printed on this ballot make a cross X mark in the voting space at the left of the name. To vote for any person whose name is not printed on this ballot write the name of such person in the blank space provided for that purpose under the title of the public office or party position to which you wish him nominated or elected. Any other mark than the cross X mark used for the purpose of voting, or any erasure made on this ballot is unlawful. If you tear or deface or wrongly mark this ballot, return it and obtain another, but only one additional ballot may be thus obtained."

Upon the face of the ballot and directly below the perforated line shall be printed the following: "Official ballot for the primary election of the (name of party) party," the name of the

county and town or city; the date on which such primary is held; the party emblem; the assembly district number, number of the ward (in any city divided into wards), and the election district number, directly below which shall be printed a heavy black horizontal line.

The face of the ballot below such heavy black horizontal line shall be in two parts, and when delegates to a state or judicial district convention are to be elected at a primary at which members of committees are also to be elected it shall be in three parts, divided by a heavy black vertical line or lines, each one-fourth of an inch in width. Immediately below the heavy black horizontal line in the center of the first part shall be printed the caption "Candidates for nomination for public office." Under said caption the names of candidates for nomination for public office shall be printed under the titles of the respective offices for which they are candidates respectively, in capital letters in black-faced type not less than one-eighth nor more than three-sixteenths of an inch in height, so that the names of all candidates for nomination for an office shall be printed under the title of said office, and so that the said offices shall appear in the same consecutive order in which they appear upon the official ballot for the general election. Immediately below the title of each public office shall be printed in brier lower case type a direction to the voters as to the number of persons to be voted for, in the following words: "Vote for . . . . . ." (the blank space being filled with the numbers of persons to be nominated for said office at the official primary election). Immediately below this direction and separated therefrom by a horizontal line shall be printed the name or names of candidates duly designated for such office. The order in which the names of candidates shall appear under the title of an office shall be determined by the board or officer with whom designations are filed by lot in the presence of the candidates or their representatives, if present, and other persons required to be notified. At least two days' notice by mail shall be given to all candidates whose names appear on designating petitions and to the members of the committees, if any, appointed by such petitions, of the time and place of such determination, except that when any such designation petition is filed with the board of elections of the city of New York such notice shall be given only to the members of the committee, if any, appointed by such petition.

If a vacancy be filled after the position of such names has been determined, the name of the newly designated candidate shall be printed in the order determined for the candidate whose designation was made vacant.

Immediately below the names of all the candidates in the case of each public office there shall be left a blank space or blank

spaces equal in number to the number of candidates to be nominated for said office. The voter at the official primary election may write in such blank space or spaces the name of any person or persons for whom he desires to vote whose name or names are not printed upon the ballot. Voting spaces shall be provided at the left of each column opposite the names of candidates in the same manner as provided for on the official ballot for the general election.

Immediately below the heavy black horizontal line and in the center of the second part shall be printed the caption "Candidates for the party position of committeeman." Immediately below such heavy black horizontal line and in the center of the third part (or second part if no members of committees are to be elected) shall be printed the caption "Candidates for the party position of delegate or alternate." Under any such caption the names of candidates for election to party positions shall be printed under the titles of the proper party positions, respectively, for which they are severally the candidates, so that the names of all candidates for a party position shall be printed under the title of the position. The party positions of committeemen shall be printed in the following order: member of state committee; member (or members) of county committee. The party positions appearing in the last part of the ballot shall be printed in the following order: delegate, or delegates, to state convention; alternate delegate, or delegates, to state convention; delegate, or delegates, to judicial district convention; alternate delegate, or delegates, to judicial district convention.

At the spring primary, the ballot, below the heavy black horizontal line, shall be in two parts, the first for candidates for the party position of committeeman and the second for candidates for the party position of delegate or alternate. The order in which delegates and alternates shall be printed on the ballot for such primary is as follows: delegate, or delegates, to state convention; alternate delegate, or delegates, to state convention; district delegate, or delegates, to national convention; district alternate delegate, or delegates, to national convention.

Immediately below the title of each party position shall be printed in brier lower case type a direction to voters as to the number of persons to be voted for, in the following words: "Vote for . . . ." (the blank space being filled with the number of persons to be elected to said party positions at the official primary election). Immediately below this direction and separated therefrom by a horizontal line shall be printed the name or names of candidates duly designated for such party positions in such order as the board or officer with whom designations are filed may by lot determine, upon the notice and in the manner provided for determining the order in which candidates for nomination to

public office shall be printed. Immediately below the names of all the candidates in the case of each party position there shall be left a blank space or blank spaces equal in number to the number of candidates to be nominated for said positions and the voter at the official primary election may write in such blank space or spaces the name or names of any person or persons for whom he desires to vote whose name or names are not printed upon the ballot. Voting spaces shall be provided at the left of each column opposite the names of the candidates in the same manner as provided for on the official ballot for the general election.

Where two or more candidates are to be elected to a party position, the names of candidates designated by each petition shall be grouped, and the order in which the groups shall be placed shall be determined by lot, in the manner provided in this section, for determining the order in which the names of candidates shall be printed under the title of an office or party position. The names within a group designated by petition shall be placed in the same order that they appear in the petition, unless they appear in a different order on different papers of the petition, in which case their order within the group shall be determined by lot.

The officer or board charged with the duty of printing, preparing and distributing ballots shall determine into how many vertical columns any part of the ballot shall be divided; provided, however, that the names of all persons designated for nomination to the same office or for election to the same party position shall appear in the same column. Between the captions of the several parts of the ballot and the titles of the first offices or positions printed at the top of a column or part, and extending across each part, shall be printed two light parallel horizontal lines, separated by a space of approximately one-sixteenth of an inch in width.

To the left of the voting spaces, other than the voting spaces adjoining the heavy black vertical line dividing the respective parts of the ballot, there shall also be a heavy vertical black line one-half the width of such dividing line, or one-eighth of an inch in width.

The names of candidates for nomination for public office and the names of candidates for party positions shall be numbered consecutively with arabic numerals printed in heavy faced type at the left of the name of each candidate and at the right of the voting space aforesaid, from one upward beginning with the name of the first candidate for nomination for public office whose name is printed first upon the ballot in the column at the left and continuing consecutively through the names of said candidates for nomination for public office and then consecutively through the names of the candidates for party positions; except that where there are two or more candidates for a party position grouped as hereinbefore provided, each group shall have but one number, which shall be printed

opposite the approximate center of the group, and there shall be between each group, including the group of spaces for names not printed, a blank space five-sixteenths of an inch in depth.

Where the name of a candidate for nomination for the same public office or for election to the same party position is designated by two or more petitions, it shall be placed upon a ballot only once; if a candidate for a party position to be filled by two or more persons be designated in more than one petition his name shall be printed only in the group of candidates designated by the petition first filed; provided that nothing herein contained shall prevent the printing of the name of a candidate upon the same official ballot as a candidate for nomination for public office and at the same time as a candidate for one or more distinct party positions.

On the back of the ballot below the stub and immediately at the left of the center of the ballot shall be printed the name and emblem of the party, and in great primer roman condensed capitals "Official primary ballot for," and after the word "for" shall follow the designation of the election district for which the ballot is prepared, the date of the primary election, and a fac-simile of the signature of the officer who has caused the ballot to be printed. Immediately above the center of such indorsement and upon the back of the stub, shall be printed the consecutive number of the ballot beginning, on the ballots of each party, with "number one," and increasing in regular numerical order, and on the back of the stub below the number, the name of the party. All official primary ballots shall, so far as conforms to the above description, be substantially in the following form:







the column and proceeding to the bottom of the list. This necessarily leaves as the only space where names of delegates to the national convention can be printed the foot of the ballot at the end of the list as fixed by the statute. *Matter of Duell v. Bd. of Elections* (1912), 206 N. Y. 79.

**Use of emblem.**—The intent of this section as to arrangement of candidates in columns, etc., is to segregate each group independently nominated by petition, each group to appear under its distinct emblem and where there has been a prior selection of a particular emblem to distinguish other independent candidates upon the same ballot made by different petitioners, it cannot be used by other petitioners. *Matter of Wetmore* (1912), 76 Misc. 627.

An official ballot shall be printed and subject to inspection and ready for use a long enough time before election day to enable candidates and voters to see that it complies with the law. *Matter of Holtzmann* (1914), 87 Misc. 115, 150 N. Y. Supp. 270.

Commissioners or boards of election act in a ministerial capacity only, in preparing ballots for election, and have no discretion as to the form of the ballot or designation of the officers; and hence a candidate for justice of the supreme court cannot compel said commissioners to provide ballots in which each candidate is in a section or class by himself. *Matter of Burr v. Voorhis* (1920), 229 N. Y. 382.

## ARTICLE 4-A1.

## CONDUCT OF OFFICIAL PRIMARY ELECTIONS; CANVASS OF RETURNS.

## Section 70. Organization and conduct of official primaries.

71. Qualifications of voters at official primaries.
72. Challenges at official primary elections.
73. Expense of official primaries.
74. Primary districts, officers and polling places.
75. Notice of official primaries.
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79. Ballots, booths, books, blanks and supplies.
80. Delivery of ballots and manner of voting.
81. Unofficial ballots.
82. Preparation of ballot by voters.
83. Persons within the guard-rail.
84. Watchers; challengers; electioneering.
85. Canvass of votes.
86. Intent of voters.
87. Proclamation and statement of result.
88. Preservation of records and papers.
89. Canvass of statements of results; certificates of election to party position.
90. Filling vacancies and determination of tie vote after primaries; filling certain vacancies in convention nominations.
91. Party nominations for special elections and to fill certain vacancies.
92. Unofficial primaries.
93. Penalty for violation.
94. Perjury.

## § 70. Organization and conduct of official primaries.

1. Election inspectors for each election district within or comprising a primary district shall be the election officers for such primary district.
2. All said officers shall take and subscribe the constitutional oath of office, before entering on the discharge of their duties.
3. Each primary shall be held open, for voting thereat, from seven o'clock in the forenoon until nine o'clock in the evening, except in a city of over one million inhabitants, where such primary shall be held open, for voting thereat, from three o'clock in the afternoon until nine o'clock in the evening.<sup>1</sup>
4. The primary election officers shall perform the duties required of election officers at a general election, and such additional duties as are in this chapter prescribed and shall receive the same pay as for services of inspectors on the last day of registration; except that in any city of over one million inhabitants, they shall respectively receive seven dollars and fifty cents for their services at each official primary.
5. In each year an official primary election shall be held on the eighth Tuesday before the general election; in each year in which a president of the United States is to be elected, an additional official primary election shall be held on the first Tuesday in April.
6. Subject only to such differences as are herein provided or as may be necessary, an official primary shall be conducted in the same manner as the general election. A chairman of each board of primary inspectors shall be

<sup>1</sup> New article and schedule of sections inserted by L. 1911, ch. 591. Schedule and title amended by L. 1913, ch. 820, in effect Dec. 7, 1913.

<sup>2</sup> Under the general municipal law, § 91, as added by L. 1921, ch. 70, and amended by L. 1921, ch. 260, the governing board of a city or village may provide that between the last Sunday in March and the last Sunday in October the standard time may be advanced one hour; and all official proceedings shall be so regulated.

elected in the same manner as a chairman of a board of inspectors at a general election. The chairman shall designate an inspector to act as primary ballot clerk, with the powers and duties of ballot clerks under this chapter. In a primary district comprising one election district, the inspector so designated shall be of opposite political faith from the chairman. In any primary district, the remaining inspectors, exclusive of the chairman, shall act as primary poll clerks, with the powers and duties of such clerks under this chapter. The chairman shall receive the primary ballots, as they are cast or returned by the enrolled voters. All the inspectors, including those designated as poll clerks and ballot clerks, shall also perform the duties of primary inspectors from the time the polls are opened until the statements of the results of the canvass are completed.

Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820; L. 1915, ch. 678; L. 1916, ch. 537; L. 1917, ch. 703; L. 1918, ch. 298; L. 1920, ch. 878; L. 1921, ch. 479, in effect May 2, 1921.

**Cross-references.** Form of constitutional oath, Const., art. 13 (part 2, post). Who may administer oath, Public Officers L., § 10 (part 6, post). General Construction L., § 36 (part 11, post). As to election officers and their duties at general elections, see sections 302, et seq., also art. 14, generally.

**Duties of chairman.**—Where the chairman of a caucus refuses to perform his duty or arrogates to himself the power lodged in the meeting or caucus itself, the meeting or caucus has power to elect another chairman in his place. *Matter of Broat* (1894), 6 Misc. 445, 27 N. Y. Supp. 176.

It is the duty of a chairman of a caucus or primary to put motions, properly made to a vote, and he has no right to declare a motion or resolution carried without a vote being taken, unless by unanimous consent. *Matter of Broat* (1894), 6 Misc. 445, 27 N. Y. Supp. 176.

When the chairman of a primary declares persons nominated as delegates or committeemen, elected, without taking a vote, and he refuses to take a vote thereon or to recognize any other nomination, his act is a nullity. *Matter of Broat* (1894), 6 Misc. 445, 27 N. Y. Supp. 176.

When the temporary chairman of an assembly district convention refuses, upon demand made, to call the roll of the certified members of the convention, gives a vote for the office of temporary chairman, and puts the question to vote thereon, his action is illegal. *French v. Roosevelt* (1896), 15 Misc. 367, 41 N. Y. Supp. 1080.

A primary cannot be deemed a fair expression of the choice of the voters of a town where it appears that it was held in a hall largely occupied by the adherents of one faction, that the proceedings were controlled and terminated in a period of from five to ten minutes, and that a ballot demanded was refused by the chairman of the primary, who had been elected in the interest of the faction which was in practical occupation of the hall. *Matter of County Clerk of Clinton County* (1897), 21 Misc. 543, 48 N. Y. Supp. 407.

**Rejection of vote.**—A person's vote may be rejected where he refuses, when challenged, to take the required oath or answer questions as to his qualifications. *Report of Atty.-Gen.* (1895), 223.

Section cited.—*People v. Luft* (1920), 192 App. Div. 713, 183 N. Y. Supp. 514.

## § 71. Qualifications of voters at official primaries.

No person shall be entitled to vote at any official primary unless he is duly enrolled and may be qualified to vote on the day of election. The primary election inspectors shall decide all questions that arise relating to the qualifications of voters.

**Derivation:** Added by L. 1911, ch. 891, § 32, in effect Nov. 15, 1911.

**Cross-references.** As to qualifications of voters, see also Election Law, § 162. As to review by courts with regard to rights of persons to participate in primary elections, etc., see Election Law, §§ 23 and 56.

The words "qualified to vote, etc." in this section, have relation to the qualifications specified in section 162 of the Election Law, that is the age, citizenship and residence of the voter, and not his ability to vote for all candidates that may be nominated at the convention regardless of the

voter's residence or the district for which the officer is to be chosen. *Matter of Sheridan* (1907), 57 Misc. 42, 107 N. Y. Supp. 244.

Mandamus to determine qualifications. See *Matter of Guess* (1896), 16 Misc. 306, 74 N. Y. St. Rep. 387, 38 N. Y. Supp. 91.

When an applicant has been refused enrollment as a qualified voter at a party's primaries, an alternative writ of mandamus will issue to try his qualifications as a party voter. *Matter of Guess* (1896), 16 Misc. 306, 74 N. Y. St. Rep. 387, 38 N. Y. Supp. 91.

It may well be doubted whether the condition of a voter's qualification to vote at a party primary, that he shall have voted the ticket of such party at the last election, is reasonable or lawful. *Matter of Guess* (1896), 16 Misc. 306, 74 N. Y. St. Rep. 387, 38 N. Y. Supp. 91.

It is the legal right of a party voter to vote at the primaries of his party, and the question whether an applicant is entitled to be enrolled and to vote at the primaries, does not depend upon the discretion, nor upon the decision of the enrolling committee, but upon the fact of whether he possesses the requirements. *Matter of Guess* (1896), 16 Misc. 306, 74 N. Y. St. Rep. 387, 38 N. Y. Supp. 91.

The qualification and limitation "duly enrolled" applies only to the election district in which the voter is enrolled and upon the enrollment book of which his name appears. *Matter of Steinbrink v. Lloyd* (1915), 169 App. Div. 354, 154 N. Y. Supp. 870.

## § 72. Challenges at official primary elections.

The right of an enrolled voter to participate in any official primary election shall be subject to challenge at any time before his ballot is deposited in the ballot box. When any enrolled voter shall be challenged, the chairman, or one of the members, of said board, shall forthwith put to him an oath or affirmation to answer truly such questions as shall be put to him, and he shall be allowed to vote if, and only if, he shall make such oath or affirmation, and shall answer in the affirmative each of the following questions: "Are you ..... (using the name which he has given as his name)?"

Do you reside, and have you, for thirty days last past, resided at ..... (giving the address which he has given as his residence)?"

**Derivation:** Formerly § 57. Renumbered by L. 1911, ch. 891, § 33, in effect Nov. 15 1911. Originally revised from Primary Election Law, § 7, subd. 2.

**Purpose of oath.**—A voter who has enrolled in an election district and subsequently moved his residence into another district, in which he is not enrolled, is not entitled to vote at the primary election in the district to which he has removed, even though his name has not been stricken from the enrollment list, and he cannot compel the board of inspectors to receive his ballot by taking the oath provided for in this section. The oath provided is a means of identifying only a voter who is enrolled in the election district in which he seeks to vote. *Matter of Steinbrink v. Lloyd* (1915), 169 App. Div. 354, 154 N. Y. Supp. 870. Report of Attorney General, Sept. 23, 1915.

## § 73. Expense of official primaries.

The expense of official primary elections, including the expense of new books for copying enrollments in the case of changed election districts, and the compensation herein provided to be paid to primary election officers, shall be paid by the same officers or boards and in the same manner, as the expenses of general elections. If provision shall not have been made for the payment of

such expense in any year, then the officers who are empowered by law to make such provision in any county, city, town or other political subdivision of the state, are hereby authorized and directed to raise money to such an amount as may be necessary, in any manner provided by law for meeting expenses in anticipation of the collection of taxes and to pay such expense therefrom. The amount so raised shall be included in the amount to be raised by tax in the ensuing year.

**Derivation:** Formerly § 47. Renumbered and amended by L. 1911, ch. 891; amended by L. 1919, ch. 504, in effect Oct. 1, 1919. Originally revised from Primary Election Law, § 4, pt. of subd. 2, as amended by L. 1900, ch. 508, § 1. L. 1901, ch. 360, § 1.

#### § 74. Primary districts, officers and polling places.

The custodian of primary records shall thirty days before each official primary day, divide every ward in a city, except a city of the first class, and divide every village having five thousand inhabitants or more, into primary districts, each of which shall consist of two contiguous election districts, except that in case there is an odd number of election districts in such ward or village, one such election district, to be selected by the custodian of primary records, shall be a primary district by itself. In each of such primary districts, except where an election district shall be a primary district by itself, there shall be two polling places. Such polling places shall be designated and provided at public expense by the officers or boards whose duty it is to provide polling places for days of general election, and shall be, so far as they are available, the same places as were used for the last preceding general election. The custodian of primary records shall assign one of the polling places in each such primary district to the party which, at the last election of governor, cast the highest number of votes for governor, and at the other polling place in such primary district there shall be held the primary elections of all other parties. In all other villages and towns, and in each city of the first class, each election district shall constitute a primary district. In a city, town or village in which each or any election district constitutes a primary district there shall be for each such primary district primary election officers, who shall consist of the election inspectors for the election district comprising such pri-

mary district and such inspectors shall be the board of primary inspectors. In a city or village having more than five thousand inhabitants, except a city of the first class, there shall be for each primary district having two polling places two groups of primary election officers, one of which shall consist of the election inspectors for the election districts comprised within such primary district who shall at the time represent the party which at the last preceding election of a governor shall have cast the largest number of votes for governor, and the other of which shall consist of the election inspectors who shall represent the party which, at such election shall have cast the second largest number of votes for governor. The first mentioned officers shall conduct the primary election of the party represented by them and the second mentioned officers shall conduct the primary elections of all other parties at the time entitled to hold primary elections. The election inspectors belonging to each such group of primary officers shall be the board of primary inspectors.

In a city, town or village in which each or any election district constitutes a primary district the polling place in each such primary district shall be designated and provided at public expense by the officers or boards whose duty it is to provide the polling places for the general election, and, where practicable, it shall also be the same place that was used at the last preceding general election, unless the primary polls be placed in a school or other public building as provided in section two hundred and ninety-nine.

**Derivation:** Formerly § 48. Renumbered and amended by L. 1911, ch. 891; amended by L. 1913, ch. 820; L. 1915, ch. 678; L. 1916, ch. 537; L. 1917, ch. 703; L. 1918, ch. 323; L. 1919, ch. 60, in effect March 19, 1919. Originally revised from Primary Election Law, § 4, subd. 3.

### § 75. Notice of official primaries.

At least thirty-five days before each official primary day, the chairman of the general committee of each party subject to the provisions of this article, shall certify and deliver to the custodian of primary records a statement of the conventions, the time when and place where such conventions are to be held, and of the committees and offices for which delegates, alternates, members or can-



delegates as the case may be, are to be elected or nominated thereat, and the number of delegates and alternates to conventions, and members of committees, to be elected in each unit of representation. The custodian of primary records shall prepare a notice of each official primary election provided for by this article, and shall publish the same not more than thirty-five days and not less than thirty days prior to the primary in at least one newspaper having a general circulation in the city or village, of the political faith of each of the two parties which, at the last preceding election of a governor, cast the highest and next highest number of votes for governor. Such notice shall specify the day of such primary election, the hours during which it will be held, the location of each polling place, the election districts whose voters may vote at each such polling place, the name of the party or parties whose primary elections will be held thereat, and the party conventions, party committees or public offices for which delegates, members or candidates, as the case may be, will be chosen thereat.

**Derivation:** Primary Election Law, § 4, subd. 4, as amended by L. 1903, ch. 163.

Former § 49, renumbered and amended by L. 1911, ch. 891; amended by L. 1912, ch. 820; L. 1921, ch. 479, in effect May 2, 1921.

**Unit of representation.**—Where the certificate, required by subdivision 4 of section 4 (now Election Law, § 49), is delivered to the custodian of primary records and the unit of representation established by the party in the assembly district, by reason whereof members of the party might vote for delegates to certain conventions which would nominate candidates for office for whom they could not vote at the general election, the districts for which such officers were to be elected not being coterminous with the assembly districts, the board of elections is not justified for that reason in rejecting the certificate and refusing to publish a call or notice pursuant thereto. *Matter of Sheridan* (1907), 57 Misc. 42, 107 N. Y. Supp. 244.

The party may lawfully establish the assembly district as the unit of representation, though such unit may not be the fairest possible unit of representation that could be established. *Matter of Sheridan* (1907), 57 Misc. 42, 107 N. Y. Supp. 244.

A statement filed pursuant to this section which shows that in one assembly district, consisting of three aldermanic districts, the electors of the entire assembly district were to participate in the election of all the delegates to the aldermanic convention does not conform to the statute, and violates article 2 of the rules and regulations of the Democratic party for the county of New York, and also section 53 (now § 5) of the Election Law. *Matter of Murphy* (1908), 126 App. Div. 58, 110 N. Y. Supp. 1020.

The term "general committee," as used in section 10, is made by the amendment of 1901 to mean the general city committee, and the requirements contained in this section, that the chairman of the general committee of each party shall file with the custodian of primary records a statement of the number of delegates to be selected to conventions, mean the chairman of both the general county committee and the chairman of the general city committee. *Matter of Wallace* (1901), 36 Misc. 1, 72 N. Y. Supp. 445.

### **§ 76. Restrictions as to place of primaries.**

No primary election shall be held in a saloon or drinking place, or in a room which is more than one flight of stairs from the street or not readily accessible from the street.

**Derivation:** Formerly § 51. Renumbered by L. 1911, ch. 891, § 37, in effect Nov. 15, 1911. Originally revised from Primary Election Law, § 4, pt. of subd. 5.

### **§ 77. Removals from, and filling vacancies in, boards of primary election officers.**

Removals from boards of primary election officers shall be made, and vacancies occurring in such boards shall be filled, in the same manner as is provided in this chapter for making removals from boards of election officers and for filling vacancies therein on a day of registration.

**Added by L. 1911, ch. 891, § 38, in effect Nov. 15, 1911.**

### **§ 77-a. Duties of primary poll-clerks at spring or fall primary, outside of a city of over one million inhabitants.**

Upon each delivery of an official primary ballot by the primary ballot clerk to an enrolled voter, the primary poll-clerk shall enter, opposite the name of the voter, in the appropriate column of the primary poll-book section of the register, of the election district in which the voter resides, the printed number on the stub of the ballot delivered. If the ballot delivered shall be returned and the voter shall obtain a new ballot, the poll-clerk shall in like manner

enter the number on the stub of such ballot, in the same column opposite the name of the voter. When a voter is challenged and takes either of the challenge oaths, or is assisted in preparing his ballot, the fact shall be entered by each poll-clerk in his copy of the register, opposite the name of the voter, in the "remarks" column of the poll-book section, including, in case the voter is assisted, the names of the primary officers or persons rendering the assistance, and the cause or reason assigned by the voter for such assistance. As each voter offers the ballot which he intends to vote, to a primary inspector, each poll-clerk shall report to the primary officers whether the number entered by him as the number on the ballot last delivered to such voter is the same as the number on the stub of the ballot so offered. As each enrolled voter votes, each poll-clerk shall enter the number of the ballot voted opposite the name of the voter in the appropriate column of the poll-book section of the register kept by him. At the close of the polls, the primary officers, including the poll-clerks, shall compare the entries made by such clerks, as provided in this section and correct any mistakes found therein.

Added by L. 1919, ch. 504, in effect Oct. 1, 1919.

**§ 78. Primary poll-books, for use at extra primaries outside of cities of over one million inhabitants.**

The provisions of this section shall apply only to primary districts outside of a city having over one million inhabitants and only to official primaries held by order of the court or a judge, under the provisions of section fifty-six. The provisions of this section shall not apply to the regular spring or fall primary. Each primary poll-clerk at each polling place at an official primary election, to which this section applies, shall have a poll-book for each election district within the primary district for keeping the list of enrolled voters voting, or offering to vote thereat. Such book shall have

columns headed respectively "number of enrolled voter," "name of enrolled voter," "residence of enrolled voter," "number on ballots delivered to enrolled voter," and as many additional columns as there are political parties entitled to representation on the official ballot. At the head of each of such additional columns shall be printed the party names in the same order that they appear on the official ballot for the general election and underneath each party name shall be printed "number on ballot voted." There shall also be, at the right, a column headed "remarks."

Upon each delivery of an official primary ballot by the primary ballot clerk to an enrolled voter, the primary poll-clerk shall enter upon the poll book of the election district in which the enrolled voter resides, in the appropriate column, the number of the enrolled voter, in the successive order of the delivery of the ballots thereto, the name of the enrolled voter in the alphabetical order of the first letter of his surname, his residence by street and number, or if he have no street number, a brief description of the locality thereof and the printed number upon the stub of the ballots delivered to such enrolled voter. If the ballot delivered to any enrolled voter shall be returned by him to the primary ballot clerk, and he shall obtain a new ballot, the primary poll-clerk shall write opposite his name on the poll-book in the proper column, the printed number of the stub of such ballot. Each primary poll-clerk shall make a memorandum upon his poll-book opposite the name of each person who shall have been challenged and taken either of the oaths prescribed upon such challenge, or who shall have received assistance in preparing his ballot and shall also enter upon the poll-book opposite the name of such person the names of the primary officers or persons who render such assistance, and the cause or reason assigned for such assistance by the elector assisted.

As each enrolled voter offers the ballot which he intends to vote to the primary inspector, each primary poll-clerk shall report to the primary officers whether the number entered on the poll-book kept by him as the number on the ballot last delivered to such enrolled voter is the same as the number on the stub of the ballot so offered. As each enrolled voter votes, each primary poll-clerk shall enter the number of the ballot voted in the column of the party whose ballot is offered. Upon the close of the polls of the primary election, the primary poll-clerks and all primary officers shall compare the poll-books with the registers and correct any mistakes found therein.

Added by L. 1911, ch. 891, § 39; and amended by L. 1916, ch. 678, L. 1918, ch. 323; L. 1919, ch. 504, in effect Oct. 1, 1919.

**§ 78-a. Primary poll-clerks and poll-books in cities of over one million inhabitants.**

1 The provisions of this section shall apply only to primary districts within a city having over one million inhabitants.

2. In every such city each primary poll-clerk at each polling place at an official primary election shall have a poll-book for keeping the list of enrolled voters voting or offering to vote thereat at the primary election. In each primary district of such city the poll-book shall be arranged in columns as provided in this section, and the leaves of such poll-book shall be indexed from A to Z. Columns one to eight inclusive shall be arranged upon the left

hand pages of said book, and the remaining columns upon the right hand pages. The first column of the poll-book shall be entitled "number of voter voting at the primary," and in such column, as the name of each enrolled voter voting at such primary is recorded, shall be entered a number opposite the name, beginning with "one" opposite the name of the first voter voting at the primary of any party in such election district and continuing in numerical order to and including the last voter voting at such polling place. The second and third columns shall together be entitled "name of enrolled voter," with the respective sub-titles "surname" and "given name or names." As the enrolled voters in the respective parties present themselves to vote at such primary the surnames of such voters shall be entered in such second column in the alphabetical order of the first letter of such names on the pages bearing the index letters of such surnames. In the third column shall be entered the christian or given name or names of such voters respectively. The fourth column shall be entitled "residence of enrolled voter," and in such column shall be entered the residence of each such voter by street and number or if it has no street number a brief description of the locality thereof. The fifth column shall be entitled "age of enrolled voter" and in such column shall be entered the age of each such voter, if thirty years of age or under, or the fact that the voter is over thirty years of age if so stated. The sixth column shall be entitled "party of enrolled voter," and in such column shall be entered the name of the party in which each such voter is enrolled and in whose primary he is participating. The seventh column shall be entitled "signature of enrolled voter (or number of identification statement)," and above each horizontal line in said column shall be printed the words "The foregoing entries are true and correct," and in such column, below such words printed above the line on which his name is entered, each voter participating in the primary shall sign his name by his own hand and without assistance, using an indelible pencil or ink, or in default of such signature (in case only of inability to sign as hereinafter provided) shall be entered the number of such voter's identification statement. The eighth column shall be entitled "signature compared by inspector," and before the voter shall receive a primary ballot, one of the inspectors, other than the inspector who receives the primary ballots from the enrolled voters, shall compare the voter's signature then and there made in such poll-book with the same voter's signature theretofore made in the registration book on registration day, and such inspector shall then and there sign his initials in said eighth column in evidence thereof. The ninth and tenth and eleventh columns shall be grouped together under the title "number of primary ballot delivered to enrolled voter" with the respective sub-titles "first ballot," "second ballot," "third ballot," and in such column or columns, beginning with the ninth, shall be entered the number on the ballot (or successive ballots) delivered to such voters respectively. Then shall follow as many columns as there are parties holding a primary in such election district, grouped together under the title "number on primary ballot voted," and at the top of each column shall be printed the name of one of such



parties, the party names to be arranged in the order of the size of their respective vote for governor at the last preceding general election, the party casting the highest number of votes for governor to come first, and so on; and the number upon the ballot voted by each such enrolled voter shall be entered in the column bearing the name of the party whose ballot he casts. The last column in such poll-book shall be entitled "remarks regarding challenges, oaths, and other facts required to be recorded," and in such column shall be entered, opposite the name of each voter, such record of challenges, oaths, and other facts relating to him as this law requires to be entered in the poll-book and are not otherwise provided for.

3. One of the primary poll-clerks at each polling place at an official primary election shall be designated by the chairman of the board of primary inspectors to ask each enrolled voter offering to vote at the primary election the questions required by law, and it shall be the duty of such primary poll-clerk to question such voter respecting his name, his age, his residence by street and number, or if it has no street number, a brief description of the locality thereof, and the name of the party in which he is enrolled; it shall also be the duty of each primary poll-clerk to enter in ink in the appropriate column the answer given to each question by each voter.

4. The procedure with respect to recording in each such poll book the names of and other particulars concerning the enrolled voters presenting themselves to vote at any primary, obtaining, comparing and certifying to their signatures prior to the delivery of ballots to them, or obtaining identification statements in lieu of such signatures, recording and announcing the ballots delivered and voted, making and recording challenges, and all other procedure with respect to the taking of the vote at any party primary shall be the same as that prescribed for the general election, and except as otherwise provided in this article, all provisions of article ten of the election law applying to the taking of the vote at a general election shall apply equally to each party primary.

Added by L. 1913, ch. 678, amended by L. 1918, ch. 323, in effect Apr. 24, 1918.

#### § 79. Ballots, booths, books, blanks and supplies.

The custodian of primary records shall have for each party printed ballots for each election district equal in number, as near as may be, to one and one-fifth times the total number of enrolled voters of the party in the election district, prepared as herein described. Such ballots and the sample ballots and the copy or copies of the register used for party enrollments, poll-books if any, blanks and stationery shall be delivered by the board of elections, at its office on the Saturday before the primary election for which they are needed to each town or city clerk in the county, except in New York city and in the city of Buffalo. It is hereby made the duty of each such town or city clerk to call at the office of such board at such time and receive such ballots and supplies. Each such town or city clerk shall deliver to the proper polling places in their city or town the ballots and such supplies for such primary election, at least one-half hour before the



time fixed for opening the polls. In the cities of New York and Buffalo, such custodian shall cause such supplies to be delivered to the proper primary officers at the various polling places at least one-half hour before the time fixed for the opening of the polls. The polling places, voting booths, guard-rails, distance markers, ballot boxes, sample ballots, poll-books if any, and other supplies required for official primary elections, shall be provided and paid for by the same officers, and in the same manner, as in the case of general elections. At all official primary elections a separate ballot box with the name and emblem of the party and with the number of the election district clearly and conspicuously written or printed thereon, shall be provided at each polling place for each party participating in a primary election at such polling place; and there shall also be a large box for the reception of unvoted ballots and an additional box for detached ballot stubs and there shall be affixed to the outside of the polling place and in at least two places on the inside thereof, and in a conspicuous manner, placards printed with large-sized bold-face type, which shall specify the name of the parties whose primary election is being held in such polling place. Sample ballots shall be provided by the custodian of primary records for each party for each election district, equal in number, as near as may be, to twenty-five per centum of the number of official ballots required to be furnished for such party for such election district. Such sample ballots shall be printed on paper different in color from the paper used for the official ballot, and there shall be no numbers upon the stubs thereof, but in all other respects such sample ballots shall be precisely like the official ballots. One of such sample ballots shall be furnished upon application at any time on primary day to any voter entitled to vote the ballot of which he requests a sample.

The custodian of primary records shall prepare and furnish for each board of primary election inspectors two tally sheet blanks and two statement of result blanks for each party whose primary election is under the jurisdiction of said board of primary election inspectors. Upon each of said blanks shall be indorsed the name of the party, the name of the county, the number of the assembly district or ward, or the name of the town, and the number of the election district for which said blank is to be used.

Each such tally sheet shall consist of three columns separated from each other by vertical lines running from top to bottom of each page of the tally sheet. In the first column shall be printed the title of each public office for which a candidate is to be nominated, and in the case of the party tally sheets, the name of each party position to which members are to be elected. Under the name of each public office on the party tally sheets for which

candidates are to be nominated and on the same page shall be printed, in alphabetical order, the names of all candidates for the nomination therefor. Under the name of each party position on the party tally sheets and on the same page shall be printed, in alphabetical order, the names of all candidates for election thereto. On all the tally sheets, under the names of the group of candidates for each public office or party position, shall be printed, each on a separate line, the words "blank" and "void" and the phrase "total number of votes cast for this office (or position)," and under such phrase shall be left several blank spaces for writing in names not printed on the ballot. Each name and each such word, phrase or space upon said tally sheet shall be separated from each other name and each other such word, phrase or space next thereto by parallel horizontal lines extending from one side of the sheet to the other. The second column upon the tally sheet shall be headed, at the top of each page thereof, "Space for tally as canvass progresses." The third column in like manner shall be headed "Space for total number of votes received by each candidate."

Each such statement of result sheet shall consist of two columns separated from each other by a vertical line running from top to bottom of each page of the sheet. In the first column shall be printed the title of each public office, and, in the case of the party statement of result sheets, the name of each party position and the names of all the candidates therefor, which shall be printed in the same manner and order as upon the tally sheet in the first column thereof. All names shall be separated from each other by parallel horizontal lines. At the head of each statement of result sheet shall be printed the following: "Statement of result of the vote cast at the official primary election held on the .... day of ..... (the blanks being properly filled)," and there shall also be printed the name of the county, the number of the assembly district or ward, or the name of the town, and the number of the election district. At the foot of each such statement of result sheet shall appear the following certificate to be signed by the primary election inspectors: "We hereby certify that the foregoing statement of result is true and correct in all respects.

.....  
 .....  
 .....  
 .....

Board of Primary Election Inspectors."

All pages of each tally sheet and of each statement of result sheet shall be securely bound together in convenient form.

Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820; amended by L. 1914, ch. 244; L. 1917, ch. 703; L. 1919, ch. 504, in effect Oct. 1, 1919.

The following decisions were rendered under former section 53, which covered the same subject and which was repealed by L. 1911, ch. 891:

**Ballots, their preparation, inspection and distribution.** There is no provision of law that requires the county committee or the political organization to print ballots for a primary, or imposes any duty in regard to the inspection or distribution of ballots or the right to inspect any ballot prepared by any elector for use at the primary. *Matter of Hammond v. General Committee* (1907), 36 Misc. 802, 108 N. Y. Supp. 589.

The use of paper lighter in weight and color is insufficient grounds for ordering a recount setting aside the declared result of a primary election, where it was conducted without fraud and it is clear that the use of such paper did not affect the result of the election. *People ex rel. Abraham v. Vesole* (1904), 43 Misc. 104, 91 N. Y. Supp. 525.

**Effect of union label imprint on ballot.** The imprint upon the face and inside of ballots at a primary election following the names of candidates voted for of a "union label" such as is ordinarily used to designate articles manufactured or worked upon by union labor, when it does not appear to have been placed upon the ballots for the purpose of identification does not render the ballots void nor authorize their rejection by the board of inspectors. *Matter of Peters* (1908), 60 Misc. 420, 112 N. Y. Supp. 339.

Paster ballots should not be used in a primary election or caucus. *Report of Atty. Gen.* (1898), 227.

Voting machines not to be used at primary election or caucus. *Report of Atty. Gen.* (1894), 286.

Printing of ballots. See *Matter of Hines* (1910), 141 App. Div. 569.

Section cited.—*People v. Luft* (1920), 192 App. Div. 713, 183 N. Y. Supp. 514.

## § 80. Delivery of ballots and manner of voting.

No voter at a primary election shall be given or be allowed to mark or cast the ballot of any party with which he has not enrolled. The folding and delivery of ballots and the manner of voting shall be the same as prescribed for the folding and delivery of ballots and the manner of voting prescribed by the provisions of this chapter relating to general elections so far\* the same may be applicable, excepting that each ballot after detachment of the stub by the officer charged with that duty shall be deposited in the separate box provided for the party designated on the ballot, and such officer, in addition to announcing the name of the voter and number of the stub, shall also announce the party name thereon.

**Derivation:** Added by L. 1911, ch. 891, § 41, in effect Nov. 15, 1911.

## § 81. Unofficial ballots.

If, for any cause, the official ballots for any party shall not be provided as required by law at any polling place, upon the opening of the polls of any primary election thereat, or if the supply of official ballots for any party shall be exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as practicable in the form of the official ballot, may be used.

**Derivation:** Added by L. 1911, ch. 891, § 42, in effect Nov. 15, 1911.

## § 82. Preparation of ballot by voters.

The voter, on retiring to the voting booth, shall prepare his ballot in the following manner: He shall make a cross X mark in

\* So in the original.

the voting square at the left of the name of each candidate for whom he desires to vote. A cross X mark is any straight line crossing any other straight line at any angle within the voting space and no ballot shall be declared void because a cross X mark thereon is irregular in form. It shall not be lawful to make any mark on the ballot other than a cross X mark for the purpose of voting, and such mark shall be made only with a pencil having black lead, and only in the voting space to the left of the name of a candidate; except that the voter may write with a pencil having black lead in the blank space under the title of the proper office or party position the name of any person or persons for whom he desires to vote, whose name or names are not printed upon the ballot, not exceeding with the candidates for whom he has voted by cross X mark the total number of persons by whom such office or position is to be filled. It shall not be lawful to deface or tear a ballot in any manner, nor to erase any printed name, device, figure, word or letter therefrom, nor to erase any mark made thereon by such voter nor inclose in the folded ballot any other paper or any article. If the voter deface or tear a ballot, or wrongly mark the same or make an erasure thereon, he may obtain one additional ballot on returning to the ballot clerk the one so defaced or wrongly marked.

Added by L. 1911, ch. 801; and amended by L. 1913, ch. 820; L. 1916 ch. 537, in eff. & May 15, 1916.

Validity of ballots having pencil dots adjacent to voting cross, irregular crosses, half crosses, excessive crosses and crosses superimposed upon numbers first written. *Matter of Garvin* (1915), 168 App. Div. 218, 153 N. Y. Supp. 549.

A ballot containing the words "O'Brien the Taxi man" is void for its distinguishing mark. Ballots with the name written "under the title of the proper office or party position" are valid, even though written below the horizontal line. A ballot with the words "for county committee" written after the name is void. Certain ballots not bearing the candidate's correct name were invalid. A superfluous cross before the name of the candidate rendered ballots void. *Matter of O'Brien* (1917), 140 App. Div. 853, 155 N. Y. Supp. 71.

Marking of ballots. See cases under § 358, post.

### § 83. Persons within the guard-rail.

From the time of the opening of the polls, until the result of the canvass of the votes cast thereat shall have been announced, and the official statements of such canvass shall have been signed, the ballot boxes and all voted ballots shall be kept within the guard rail. No person shall be admitted within the guard rail during such period, except primary election officers, duly authorized watchers, persons admitted by the inspectors to preserve order or enforce the law, and persons duly admitted for the purpose of voting; provided, however, that any candidate voted for may be present at the canvass of the votes.

Derivation: Formerly § 58. Renumbered and amended by L. 1911, ch. 891, § 45, in effect Nov. 15, 1911. Originally revised from Primary Election Law, § 7, subd. 3.

### § 84. Watchers; challengers; electioneering.

The ballot and other boxes used at any primary shall be examined by the inspectors in the presence of the watchers, if any, before any ballots are received. One watcher for each election district may be appointed by any political committee, and by any two or more of the persons whose names are upon any ballot to be voted at such primary election. Such watchers may be present at such

polling place and within the guard-rail from at least fifteen minutes before the examination of any ballot or other box at the opening of the polls of such primary election until after the announcement of the result of the canvass of the votes cast thereat and the signing of the statements thereof by the inspectors. A reasonable number of challengers, at least one person for any three or more persons of each party holding its primary election at that polling place, whose names are upon any official ballot at such primary election, shall be permitted to remain just outside the guard-rail of each such polling place, where they can plainly see what is done within such rail outside the voting booths, from the opening to the close of the polls thereat. No person shall, while the polls are open, at any polling place do any electioneering within such polling place, or within one hundred feet therefrom, in any public street or in any building or room, or in a public manner, and no political banner, poster or placard shall be allowed in or upon such polling place on any primary day.

Derivation: Formerly § 59. Renumbered and amended by L. 1911, ch. 891, § 43, amended by L. 1913, ch. 820, in effect Dec. 17, 1913. Originally revised from Primary Election Law, § 7, subd. 4.

### § 35. Canvass of votes.

As soon as the polls at any official primary election shall close, the primary inspectors shall forthwith publicly canvass and ascertain the result thereof, and they shall not adjourn or postpone the canvass until it shall be fully completed. All questions touching the validity of ballots or their conformity with the provisions of this chapter shall be determined by a majority vote of the primary inspectors. The room in which such canvass is made shall be clearly lighted, and such canvass shall be made in plain view of the public. It shall not be lawful for any person or persons during the canvass, to close, or cause to be closed, the main entrance to the room in which such canvass is conducted, in such manner as to prevent ingress or egress thereby. The primary inspectors shall proceed to canvass the vote by counting the ballots found in the ballot boxes without unfolding them, except so far as to ascertain that each ballot is single, and by comparing the ballots found in each box with the number shown by the enrollment book to have been deposited therein. If the ballots found in any box shall be more than the number of ballots so shown to have been deposited therein, such ballots shall be replaced, without being unfolded, in the box from which they were taken, and shall be thoroughly mingled therein, and one of the inspectors designated by the board shall, without seeing the same and with his back to the box, publicly draw out as many ballots as shall be equal to such excess, and, without unfolding them, forthwith destroy them. If two or more



ballots shall be found in a ballot box so folded together as to present the appearance of a single ballot, they shall be destroyed if the whole number of ballots in such ballot box exceeds the whole number of ballots shown by the enrollment book to have been deposited therein, and not otherwise. If there lawfully be more than one ballot box for the reception of ballots voted for at any one polling place, no ballot found in the wrong ballot box shall be rejected, but shall be counted in the same manner as if found in the proper box, if such ballots shall not, together with the ballots found in the proper ballot box, make a total of more ballots than are shown by the enrollment book to have been deposited in the proper box. The chairman only of the board of primary officers shall unfold the ballots taken from a ballot box. When a ballot is not void, and a primary election inspector or a duly authorized watcher shall, during the canvass of the vote, declare his belief that any particular ballot has been written upon or marked in any way for the purpose of identification, the inspectors shall write on the back of such ballot "Protested as marked for identification," and shall specify over their signatures upon the back thereof the mark or markings upon such ballot, to which objection is made. The votes upon each such ballot shall be counted by them as if not so protested. If any ballots shall be rejected as void, the reason for such rejection shall be written on the back thereof by the chairman, or by an inspector designated by him. All ballots rejected as void, and all ballots protested as marked for identification, shall be inclosed in a separate sealed package, which shall be indorsed on the outside thereof with the names of the inspectors, the designation of the election district, and the number and kind of ballots contained therein. Such package shall be filed by the chairman with the original statement of the canvass. A statement of the number of ballots of any party protested as marked for identification, and of the number thereof rejected as void, shall be included in each of the statements of the result of the canvass for such party. If requested by any watcher, the inspector shall, during the canvass, exhibit any and all ballots cast at such primary election to such watcher, fully opened and in such condition that he may fully and carefully read and examine the same, but such inspector shall not allow any such ballot to be taken from his hands. Any person other than a constituted election officer who shall handle any ballot voted or unvoted or the stub thereof shall be guilty of a misdemeanor.

**Derivation:** Formerly § 60. Renumbered and amended by L. 1911, ch. 801; amended by L. 1913, ch. 820; L. 1917, ch. 703, in effect June 1, 1917. Originally revised from Primary Election Law, § 8, subd. 1.

**Consolidators' note.** "Objected to because marked for identification" changed to "protested as marked for identification," and "objected to" changed to "protested," to be uniform with sections 370, 373, 376, 377, 378.

**Cross-references.** See also notes to Election Law, §§ 56, 79 and 89.

**Marked ballots.** The inspectors of the primary election are not authorized to refuse to count ballots objected to as marked for identification.



but should canvass such ballots and return them as protested ballots. *Matter of Crowforth (1903)*, 58 Misc. 614, 100 N. Y. Supp. 1003.

It is an application to review an action of the board of inspectors at a primary election the court will count ballots which are not proved to have been marked for the purpose of identification, when the marks they bear can be as well explained by the assumption that the persons casting the ballots thought it necessary to place the cross marks upon them, as when voting at the general election, as by the assumption that the voter marked them for the purpose of identification. *Matter of Crowforth (1903)*, 58 Misc. 614, 100 N. Y. Supp. 1003.

Void ballots must be rejected, protested ballots are to be so marked but must be counted. *Matter of Rush (1903)*, 42 Misc. 70, 85 N. Y. Supp. 581.

The imprint upon the face and inside of ballots at a primary election following the names of candidates voted for of a "union label" such as is ordinarily used to designate articles manufactured or worked upon by union labor, when it does not appear to have been placed upon the ballots for the purpose of identification, does not render the ballots void nor authorize their rejection by the board of inspectors. *Matter of Peters (1903)*, 60 Misc. 420, 102 N. Y. Supp. 339.

A ballot showing a candidate's name, which was not printed on the ballot, in the blank space under the title of an office and also shows a cross mark in the blank space to the left of the name, is void. The directions for voting at primaries and at elections are substantially the same. *Matter of Brooks (1907)*, 141 Misc. 715, 160 N. Y. Supp. 270.

Use of paper held not a marking for identification where its presence could not be discovered by an inspection of the outside of the ballot. *Matter of McBride (1899)*, 43 App. Div. 303, 60 N. Y. Supp. 333.

Erasure of names and substitution of others, not discoverable from the outside of ballot, also held not to be a marking for identification. *Matter of McBride (1899)*, 43 App. Div. 303, 60 N. Y. Supp. 333.

**Canvass of votes by board of elections in city of New York.**—The board of elections of the city of New York as custodian of primary records cannot be compelled by the Supreme Court to recount ballots returned by boards of primary inspectors as void and protested, and determine whether or not those ballots alleged to be lawful were counted and, if not counted, add them to the returns and canvass them. The power of the board of elections in such matters is ministerial only. *Matter of Rush (1903)*, 42 Misc. 70, 85 N. Y. Supp. 581.

**Power of court over returns.**—A special term has power upon proper application to set aside a canvass of inspectors of primary election, to adjudge the true result, to direct the inspectors to reconvene and make and file a record showing the results adjudged, to nullify the certificate of election, and to direct the issuance of orders to candidates entitled thereto at any time before the candidates first declared elected have actually entered into possession of their offices. *Matter of Walsh v. Church (1906)*, 115 App. Div. 82, 100 N. Y. Supp. 764.

Written statement of results of a canvass of votes cast at a primary election takes precedence over an oral proclamation of the result. *Matter of Walsh v. Church (1906)*, 115 App. Div. 82, 100 N. Y. Supp. 764.

A recounting of votes at a primary election is unauthorized when it appears that a convention has been held and candidates nominated. *Matter of Ornel (1910)*, 140 App. Div. 410, 126 N. Y. Supp. 201.

Section cited. —*People v. Luft (1920)*, 192 App. Div. 713, 183 N. Y. Supp. 514.

## § 86. Intent of voters.

If the voter marks more names than there are persons to be nominated for an office or elected to a party position, or if for any other reason it is impossible to determine the voter's choice of a

candidate for a party position or for nomination for an office, his vote shall not be counted therefor but shall be returned as a blank vote for such nomination or party position.

A void ballot is a ballot upon which there shall be found any mark other than a cross X mark made for the purpose of voting, which voting mark must be made with pencil having black lead, only in a voting space to the left of the name of a candidate, or one upon which anything is written other than the name or names of any person or persons not printed upon the ballot, for whom the voter desires to vote, which must be written in the blank space under the title of the proper office or party position with a pencil having black lead; or one which is defaced or torn by the voter, or one upon which there shall be found any erasure of any printed device, figure, letter or word, or of any name or mark written thereon, by such voter, or in which shall be found inclosed a separate piece of paper or other material, and upon such ballot no vote for any candidate thereon shall be counted. Any straight line crossing any other straight line at any angle within a voting space shall be deemed a valid voting mark. Any mark other than a cross X mark or any erasure of any kind shall make the whole ballot void, except that when such mark or erasure is made in a voting square it shall make the ballot blank only as to the office or party position in which such mark or erasure occurs; but no ballot shall be declared void or partially blank because a cross mark thereon is irregular in form.

Added by L. 1911, ch. 901; and amended by L. 1913, ch. 820; L. 1916, ch. 537, L. 1918, ch. 323, in effect Apr. 24, 1918.

Cross-reference.—See note to § 368.

Marking of ballots. See cases cited under § 359.

**First name of candidate.**—Where a voter attempted to write in the name of a candidate not printed on the ballot, the fact that he did not put in the first name of such candidate, while it might make it ineffective as a vote for that candidate, did not make the whole ballot void. *Matter of Garvin* (App. Div.), N. Y. L. J., June 9, 1915.

#### § 87. Proclamation and statement of result.

Immediately upon the completion of such canvass, the board of primary inspectors in each primary district shall make public oral proclamation of the result thereof, and shall make upon the statement of result sheet for each party a written statement of such result for each election district in such primary district, and also a duplicate thereof, which shall be known as the duplicate statement. Immediately after the completion of such statements, such board shall file the originals thereof with the custodian of primary records, and shall file the duplicate statements with the clerk of the city, town or village.

In cities having more than one million inhabitants the board of primary inspectors shall also make and sign a police return of the vote at the primary similar to that required at the general election by section three hundred and seventy-two of this chapter, and such return and its contents shall be treated in the same manner by the same officers as is provided in that section with respect to the statement of the result of the canvass of votes on election day to be delivered to the police.

**Derivation:** Formerly § 61, as amended by L. 1909, ch. 240. Renumbered and amended by L. 1911, ch. 891, § 45; and amended by L. 1915, ch. 678, in effect May 22, 1915. Originally revised from Primary Election Law, § 8, subd. 2.

**Return by inspectors.**—When the inspectors of a primary election have made a correct return of the votes as cast, a purely ministerial act, their functions cease. *Matter of Zimmer* (1912), 76 Misc. 220.

**Section cited.**—*People v. Luft* (1920), 192 App. Div. 713, 183 N. Y. Supp. 514.

**§ 88. Preservation of records and papers.**

At all reasonable times any watcher shall have reasonable opportunity to make a transcript of any such statement, or any portion thereof, and any candidate shall be entitled to receive, upon demand, a written statement showing the result of the primary election so far as he is concerned.

After the close of the canvass of the votes at official primary elections, the ballots of each party cast thereat, except the protested, void and wholly blank ballots, shall be tied together, labeled and replaced in the ballot boxes from which they were respectively taken, and each ballot box shall then be securely locked and sealed, and, together with the box containing the stubs, shall be returned to the officer from whom they were received, who shall safely keep the same, subject, however, to be produced upon the order of any court of record or judge thereof, for not less than thirty days after such primary election, and until all suits or proceedings before any court or judge touching the same shall have been finally determined, when the ballots and stubs shall be removed and without examination, destroyed. In the case of a contested nomination for office or a contested election to a party position any candidate shall be entitled as of right to an examination in person or by authorized agents of any primary ballots upon which his name lawfully appeared as that of a candidate; but the court shall prescribe such conditions, as of notice to other candidates or otherwise, as it shall deem to be necessary and proper. The custodian of primary records and the secretary of state shall preserve for at least two years all books, records, petitions, objections, certificates and papers filed with him under the provisions of this chapter, at the expiration of which time all such books, records, petitions, objections, certificates and papers may be destroyed or otherwise disposed of by such custodian or secretary of state.

**Derivation:** Formerly § 62. Renumbered and amended by L. 1911, ch. 891; amended by L. 1913, ch. 820, L. 1918, ch. 323, in effect Apr. 24, 1919. Originally derived from Primary Election Law, § 8, subd. 3, as amended by L. 1903, ch. 207, § 1.

**Time within which candidate may examine ballots.**—The provision that in the case of a contested nomination for office "any candidate shall be entitled as of right to an examination in person or by authorized agents of any primary ballots upon which his name lawfully appeared as that of a candidate" leaves nothing to the discretion of the court, and upon the claim of one who was a candidate for office at a primary election, that a recount would show that a majority of the votes were cast for him for justice of the Supreme Court in *Manhattan and The Bronx*, he is entitled as of right to such examination and the ballots are required to be preserved for thirty days for that purpose, and an application made before the expiration of the time limit must be granted. *Matter of Rush* (1917), 101 Misc. 319, 167 N. Y. Supp. 598.

**§ 89. Canvass of statements of results; certificates of election to party position.**

1. Canvass by custodians of primary records. The custodian of primary records shall forthwith proceed to canvass the statements of results filed with him as provided in this article, and shall com-

plete such canvass within one hundred and twenty hours from midnight of the day upon which the primary election was held, except that such custodian shall canvass first the votes for delegates and alternates to state and judicial district conventions and complete such canvass at the earliest time possible.

He shall canvass separately the votes cast in each election district by the enrolled voters of the several parties respectively.

The candidate for a party nomination to public office, or for election to a party position, to be filled by the voters of a territory wholly within an election district, ward or town, who has received the highest number of votes cast in the primary election of a party in such election district, ward or town, shall be the nominee of said party for such public office, or shall be elected to such party position. Said custodian shall deliver upon request to such candidate, if he be elected to a party position, a certificate of his election.

The candidate for a party nomination to public office, or for election to a party position, to be filled by the voters of a district wholly within the jurisdiction of a custodian of primary records and greater than an election district, ward or town, who has received the highest number of votes cast in the primary election of a party in such district shall receive the nomination of said party for the public office, or be elected to the party position, for which he was designated or voted for. The custodian of primary records shall deliver upon request to such candidate, if he be elected to a party position, a certificate of such election, and, immediately after completing the canvass of votes for delegates and alternates to conventions, shall make up the rolls of any judicial district convention for a judicial district wholly within the jurisdiction of such custodian, to which delegates, and alternates, if any, were elected at such primary, and promptly mail or deliver a certified list of such delegates, and alternates, to the chairman and secretary of the committee which, by the rules of the state committee of the party holding the convention, is empowered to call the convention.

The custodian of primary records shall duly certify to the secretary of state a statement of the vote cast in the county in the primary election by the enrolled voters of each party, respectively, for all candidates for nomination for public office, or for election to party position, whose designations are required by this chapter to be filed in the office of the secretary of state. He shall also certify to the secretary of state a list of delegates, and of alternates, if any, elected to each state convention and also delegates, and alternates, if any, elected to any judicial district convention in a district not wholly contained within the jurisdiction of such custodian. Each such certified list of delegates and alternates shall be filed by such custodian in the office of the secre-

tary of state within forty-eight hours from midnight, and every other statement herein required to be certified to such secretary shall be so filed within one hundred and twenty hours from midnight of the day on which the primary election was held, and such custodian shall also certify to the secretary of state the names and addresses of nominees of the various parties for the office of representative in congress, state senator and member of assembly, where designations are not filed with the secretary of state.

2. Canvass by the secretary of state. The secretary of state shall forthwith proceed to canvass the certified statements so filed with him, and such canvass shall be made separately as to the candidates of each party.

The candidate voted for at an official primary election who has the highest number of votes shall receive the nomination of said party for the public office, or be elected to the party position, for which he was designated or voted for. The secretary of state shall forthwith transmit to each candidate elected to a party position a certificate of such election.

3. A certificate of election to party position at an official primary of a party duly issued as herein provided shall entitle the person to whom it is issued to membership in the committee or to a seat in the convention to which he is elected. Upon the completion of said canvass to be made by the secretary of state, he shall prepare certified statements of the result of the primary election of each party participating therein. Immediately upon receipt from the several custodians of primary records of certified lists of delegates and alternates elected to conventions, he shall make up the rolls of the state convention and of each judicial district convention, of each party, to which delegates, and alternates, if any, were elected at such primary, except a judicial district convention for which the rolls of delegates and alternates are to be prepared under the provisions of this section by a custodian of primary records, and promptly mail or deliver certified lists of such delegates, and alternates, if any, as follows: any such list for a state convention of a party shall be mailed or delivered to the chairman and secretary of the state committee of such party; any such list for a judicial district convention of a party shall be mailed or delivered to the chairman and secretary of the committee which, by the rules of the state committee of the party holding the convention, is empowered to call the convention. The lists of delegates and alternates to a state convention certified by the secretary of state as provided in this subdivision, and the lists of delegates and alternates to a judicial district convention certified by the secretary of state or custodian of primary records as provided in this section, shall be conclusive except upon judicial review as provided in section fifty-six of this chapter.

4. The statements of result of any official primary election filed or prepared in the office of a custodian of primary records or of the secretary of state showing the nomination of a party candidate for public office at an official primary election shall be equivalent to a certificate of his nomination, and no other certificate of nomination shall be required to be filed for any such candidate so nominated.

Added by L. 1911, ch. 891, amended by L. 1913, ch. 820; L. 1914, ch. 244; L. 1918, ch. 323; L. 1921, ch. 479 in effect May 2, 1921.

Duty of custodian is ministerial.—The duty imposed upon the custodian of primary records by this section to deliver the certificate of nomination to the person who, by the statement filed and canvassed, is shown to have been nominated, is ministerial and not judicial, and he has no power to receive or act upon affidavits tending to explain, vary or contradict such statement and he cannot therefore determine that certain votes cast for a candidate having a similar name as one of the other candidates were intended for such other



candidate. *People ex rel. Caliban v. Hunt* (1902), 75 App. Div. 33, 77 N. Y. Supp. 973, rev'g 36 Misc. 622, 74 N. Y. Supp. 399.

Nor has the court any power to refuse or consider such affidavits in the proceeding instituted to review the action of the custodian of primary records in refusing to issue a certificate of nomination to the relator. *People ex rel. Caliban v. Hunt* (1902), 75 App. Div. 33, 77 N. Y. Supp. 973, rev'g 36 Misc. 622, 74 N. Y. Supp. 399.

### **§ 90. Filling vacancies and determination of tie vote after primaries; filling certain vacancies in convention nominations.**

A vacancy in a nomination for public office made at a primary election shall be filled as follows: A vacancy caused by the declaration, disqualification or death of a candidate, or by a tie vote, shall be filled by a majority vote of a quorum of the state committee, if the vacancy occur in a nomination for an office to be filled by all of the voters of the state, and otherwise by the members of the county committee or committees elected at such primary in the political subdivision in which such vacancy occurs, or by such other committee as the rules and regulations of the party may provide. A vacancy caused only by the declaration, disqualification or death of a candidate for public office nominated by a state or judicial district convention shall be filled in the same manner. A certificate of any nomination to fill a vacancy provided for in this section shall be filed with the board or officer with whom a designation of a candidate for such public office is required to be filed, or, in the case of a vacancy in a nomination by convention, with the board or officer with whom an independent certificate of nomination for the same office is required to be filed.

Added by L. 1911, ch. 891; amended by L. 1913, ch. 820; L. 1921, ch. 479, in effect May 2, 1921.

### **§ 91. Party nominations for special elections and to fill certain vacancies.**

Party nominations to an office to be voted for at a special election shall be made in the manner prescribed by the rules and regulations of the respective parties. A party nomination of a candidate for a vacancy in an elective office required to be filled at the next general election, occurring after the expiration of the period provided for the delivery by the chairman of a general committee to the custodian of primary records of the certified statement provided for in section seventy-five, shall be filled by a majority vote of a quorum of the state committee, if the vacancy occur in a nomination for an office to be filled by all the voters of the state, and otherwise by the members of the county committee or committees elected in the political subdivision in which such vacancy occurs at the official primary preceding the general election at which such vacancy is to be filled, or by such other committee as the rules and regulations of the party may provide.

Derivation: Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820, in effect Dec. 17, 1913.

Nominations may be made by the party committees for an office becoming vacant after the primaries. *Opinion of Atty.-Gen. (1919)*, 21 State Dept. Rep. 278.

### **§ 92. Unofficial primaries.**

Notice of all unofficial primary elections shall be given in the same manner as in the case of official primary elections, except that such notice shall be given by the proper party officers and shall not be at public expense. Unofficial primary elections shall be held in such places within the unit of representation for which the primary election is held, as shall be designated by the proper political committee, but there shall be at least one polling place within and for each assembly district, ward or village. The chairman and



secretary of the political committee calling an unofficial primary election, or under whose direction such primary election is held, shall post and keep posted during the election, at or near the entrance to the room where the primary election is held, so that the same is clearly visible from the street, a conspicuous notice calling attention to the place at which the primary election is being held. Unofficial primary elections shall be held at the expense of the party holding them, and, except as herein otherwise provided, shall be subject to the rules and regulations of such party.

There shall be a chairman and secretary for each unofficial primary and there may be tellers. No person shall be entitled to vote at an unofficial primary unless he may be qualified to vote on the day of election.

The chairman may administer any oath required to be administered at any primary and he shall decide all questions that arise relating to the qualification of voters when a voter is challenged by any elector and shall reject such vote unless the person offering the vote is willing to be and shall be sworn that he will truly answer all questions put to him touching his qualifications as such voter and shall state under oath that he is qualified to vote at such primary.

The ballot box used at any primary shall be examined by the secretary and by the tellers, if any, in the presence of the watchers, if any, before any ballots are received, to see that there are no ballots therein. Such watchers are entitled to be present from the commencement of the primary to the close of the canvass and the signing of the certificates thereof. At the close of the canvass of the ballots cast for each candidate, the secretary shall publicly announce the vote and the result of the canvass.

No unofficial primary election shall be held in a saloon or drinking place, or in a room which is more than one flight of stairs from the street or not readily accessible from the street.

**Derivation:** Former § 50. Renumbered and amended by L. 1911, ch. 891, § 54 in effect Nov. 15, 1911. Originally revised from Primary Election Law, § 4, pt. of subd. 3.

**Objection as to notice, when unavailable.**—The objection that it does not appear affirmatively that notice of a primary election was published as required at the Primary Election Law cannot be taken for the first time on a review of the determination of the board of elections as to the result, and particularly where the alleged defect was not specified in the petition for a review. *Matter of Kennedy* (1902), 36 Misc. 721, 74 N. Y. Supp. 359.

**§ 93. Penalty for violation.**

Unless otherwise expressly provided in this chapter any person violating any of the provisions of articles two, three, four, four-a and four-b of this chapter is guilty of a mi-demeanor.

Derivation: Added by L. 1911, ch. 891, § 64, in effect Nov. 15, 1911.

**§ 94. Perjury.**

All oaths administered under the provisions of this article and the preceding articles of this chapter are hereby declared to be oaths required by law, and to be necessary for the ends of public justice.

Derivation: Formerly § 74. Renumbered and amended by L. 1911, ch. 891; amended by L. 1913, ch. 830, in effect Dec. 17, 1913. Originally revised from Primary Election Law, pt. of § 10.

## ARTICLE 4-B.\*

## CONVENTIONS.

- Section 110. How convention constituted; vacancies.  
111. Organization of conventions.  
112. Time of holding conventions.  
113. Credentials of delegates; voting.  
114. Unofficial conventions.

## § 110. How convention constituted; vacancies.

1. State conventions for the nomination of party candidates for public office to be voted for by all the voters of the state, and judicial district conventions for the nomination of party candidates for the office of justice of the supreme court shall be constituted by the election of delegates, and of any alternate delegates provided for by party rules and regulations, from each unit of representation. The assembly district shall be the unit of representation. The number of delegates, and of alternate delegates if any, from each unit of representation, shall be determined by party rules and regulations, subject to the following conditions: (a) the number of delegates from each unit of representation shall be substantially in accordance with the ratio which the number of votes cast for the party candidate for governor at the last preceding general state election in such unit bears to the total vote cast at such election for such candidate in the entire state; and (b) the number of alternate delegates from any unit of representation shall not exceed the number of regular delegates therefrom. If, by reason of a change in the boundaries of assembly districts after an election of governor, the exact vote at such election in the territory constituting an altered district is not ascertainable, such vote, for the purpose of this section, shall be estimated.

Added by L. 1921, ch. 479, in effect May 2, 1921.

2. The delegates, and the alternates, if any, for such unit shall be elected at the fall primary preceding the general election at which such public offices are to be filled. When a duly elected delegate does not attend the convention, his place shall be taken by one of the certified alternates to be substituted in his place, in the order in which the name of such alternate appears upon the certified list, and if no alternates shall have been elected or if no alternates appear at such convention, then the delegates present from the same unit of representation shall select a person to fill the vacancy.

Added by L. 1921, ch. 479, in effect May 2, 1921.

\* Article added by L. 1921, ch. 479, in effect May 2, 1921.

### § 111. Organization of conventions.

The room designated for the meeting place of any such convention shall have ample seating capacity for all delegates and alternates.

Every such convention shall be called to order by the chairman of the committee with whom the call originates or by a person designated in writing for that purpose by such chairman, or, if he fails to make such designation, then by a person designated in such manner as the rules and regulations of the party shall prescribe. Such chairman or person designated shall have the custody of the roll of the convention until it shall have been organized. No such convention shall proceed to the election of a temporary chairman or transact any business until the time fixed for the opening thereof nor until a majority of the delegates or respective alternates named in the official roll shall be present. The roll call upon the election of temporary chairman shall not be delayed more than one hour after the time specified in the call for the opening of the convention, provided a majority of the delegates, including alternates sufficient to make up such majority by substitution, are present. The temporary chairman shall be chosen upon a call of the official roll, and as the name of each delegate is called he shall rise in his place and declare his choice for such officer. The person who calls the convention to order shall exercise no other function than that of calling the official roll of the delegates upon the vote for temporary chairman and declaring the result thereof. The committees of the convention shall be appointed by the convention, or by the temporary chairman, as the convention may order. Unless the convention shall otherwise order, the permanent chairman shall be chosen on roll call. The permanent officers shall keep the records of the convention.

Added by L. 1921, ch. 479, in effect May 2, 1921.

### § 112. Time of holding conventions.

Any such state or judicial district convention shall assemble on or after the seventh Tuesday preceding the general election. The convention shall not have power to authorize a committee to nominate candidates for public offices, except to fill vacancies in nominations made by the convention and caused by the death, declination or disqualification of a candidate. Within forty-eight hours after adjournment of the convention, the permanent records of the convention, duly certified by the chairman and secretary, shall be filed with the board or officer with whom a certificate of nomination by the same convention is required to be filed.

Added by L. 1921, ch. 479, in effect May 2, 1921.

**§ 113. Credentials of delegates: voting.**

The delegates certified or adjudicated to have been elected as such in the manner provided in this chapter shall be conclusively entitled to their seats, rights and votes as delegates to such convention. When the vote of such convention is taken upon the nomination of candidates for public office, the roll of the delegates shall be called and each delegate when his name is called shall arise in his place and announce his choice, except that the chairman of a delegation from any unit of representation may, unless a member of such delegation objects, announce the vote of such delegation.

*Added by L. 1921, ch. 479, in effect May 2, 1921.*

**§ 114. Unofficial conventions.**

Nothing contained in this chapter shall prevent a party from holding party conventions at such times and to be constituted and conducted in such manner as the rules and regulations of the party may prescribe; but a convention not constituted, held and conducted as provided in the preceding sections of this article shall have no power to nominate candidates for public office.

*Added by L. 1921, ch. 479, in effect May 2, 1921.*

## ARTICLE 5.\*

## NOMINATING CERTIFICATES; EMBLEMS; VACANCIES.

**Section 120.** Certificates of nominations by party conventions and to fill vacancies therein

121. Certification and filing of nominations for town, village and certain other offices.
122. Independent nominations.
123. Independent certificates of nomination.
124. Emblema.
125. Conflict in names or emblema.
126. Supplying omitted emblema.
127. Places of filing certain certificates of nomination.
128. Times of filing independent certificates and certain other certificates of nomination.
129. Certification of nominations by secretary of state.
130. Publication of nominations
131. Lists for town clerks and aldermen.
132. Posting town and village nominations.
133. Declaration of nomination.
134. Objections to certificates of nomination.
135. Filling vacancies in nominations.
136. Certificates of new nominations.
137. Death of candidate after printing of ballots, official posters.

**§ 120. Certificates of nominations by party conventions and to fill vacancies therein.**

The certificate of party nominations made by a convention, or by a committee to fill vacancies in any such nomination caused by the death, declination or disqualification of a candidate duly nominated by the convention, shall contain the title of the office for which each person is nominated, the name and residence of each such person, and, if in a city, the street number of the residence of each such candidate and his place of business if any. It shall also designate, in not more than five words, the name of the party which the convention making such nomination represents. It shall be signed by the presiding officer and a secretary of such convention, or, if made by a committee, by a majority of the members thereof, or by such number as are authorized by this chapter to fill a vacancy, who shall add to their signatures their respective

\* Title and schedule amended by L. 1913, ch. 820, in effect Dec. 17, 1913.



places of residence, and shall make oath before an officer qualified to administer oaths that the affiants were such officers, or that they are members of such committee and constitute either a majority or the number thereof authorized by this chapter to fill vacancies, and that such certificates and the statements therein contained are true to the best of their information and belief. A certificate that such oath has been administered shall be made and signed by the officer before whom the same was taken and attached to such certificate of nomination. When a nomination to fill any such vacancy is made by a committee other than one composed of members of a state or county committee, a duly certified copy of the rule or regulation by which such committee is constituted, and of any resolution provided for in the rules and regulations for the appointment of such committee, shall be attached to its certificate of nomination; provided that it shall not be necessary to attach a copy of a rule or regulation previously filed in the same office.

A certificate of nomination to which this section applies shall be filed with the board or officer with whom an independent certificate of nomination for the same office or offices is required to be filed.

Added by L. 1921, ch. 479, in effect May 2, 1921.

**§ 121. Certification and filing of nominations for town, village and certain other offices.**

A person nominated at a party primary for a town or village office or for a city office to be filled at an election held at a different time from the general election shall receive a certificate of such nomination. It shall be signed by the presiding officer and a secretary of such primary, or, if made by a committee, by a majority of the members thereof, who shall add to their signatures their respective places of residence, and shall make oath before an officer qualified to take affidavits that the affiants were such officers of such primary or that they are members and constitute a majority of such committee, as the case may be, and that such certificates and the statements therein contained are true to the best of their information and belief. A certificate that such oath has been administered shall be made and signed by the officer before whom the same was taken and attached to such certificate of nomination. Such certificate of nomination shall contain the title of the city, town or village office for which such person is nominated and his

name and residence. Such certificate shall also designate, in not more than five words, the name of the political party by which the nomination is made and shall be properly authenticated. Such certificate shall also, upon its face, appoint a committee of three or more persons to fill a vacancy in any of such nominations occurring for any of the reasons specified in section one hundred and thirty-five of this chapter between the date of such nomination and the day of election.

Such certificate shall be filed with the clerk of such city, village or town, respectively. In towns in which town meetings are held at the time of the general election, certificates of nomination of candidates for town offices shall be in duplicate, one of which shall be filed with the town clerk of the town in which such officers are to be voted for and the other with the board of elections of the county in which such town is located. Such certificates, in towns in which town meetings are held at the time of the general election, shall be so filed not earlier than the fifth Tuesday and not later than the fourth Tuesday before such election. In villages, and in cities and towns in which the city elections or town meetings are held at a time other than the day of general election, such certificates shall be filed with such city, village or town clerk, not less than twenty nor more than thirty days before the day of election or town meeting. All such filed certificates and corrected certificates of nomination, all objections to such certificates and all declinations of nominations are hereby declared to be public records.

**Derivation:** Election Law, pt. of § 56, as amended by L. 1898, ch. 335; L. 1901, ch. 634; L. 1911, ch. 891.

**Repealed and new section inserted by** L. 1913, ch. 820; amended by L. 1918, L. 1920, ch. 878, in effect May 21, 1920.

**Cross-references.** Misconduct in relation to certificates of nomination. Penal Law, § 760 (part 5, post.) See also note to Election Law, §§ 123, 124 and 125.

**Forms**—For party certificates of nomination, see Forms (part 12, post.)

**Sufficiency of certificate**—A paper purporting to be a certificate of nomination for village officers made by the Independence League at a primary is not sufficient to warrant placing the names of the candidates upon the official ballot where it appears that sufficient notice of the primary was not given. *Matter of Freund* (1907), 53 Misc. 354, 193 N. Y. Supp. 420.

### § 122. Independent nominations.

Nominations made as provided by this and the next section shall be known as independent nominations, and the certificate whereby such nominations are made shall be known as an independent certificate of nomination. Independent nominations of candidates for public office to be voted for by all the voters of the state can only be made by twelve thousand or more voters of the state; provided, however, that in making up such number at least fifty voters in each county of the state (the counties of Fulton and Hamilton to be considered as one county) shall subscribe the certificate provided for in this and the next section. Independent nominations of candidates for offices to be voted for by the voters of any political subdivision of the state, other than a village, can only be made by five per centum of the total number of votes cast for governor at the last gubernatorial election in such political subdivision, or, if the political subdivision be a village, by five per centum of the total number of votes cast at the last regular village election, except-

ing that not more than three thousand electors shall be required to make an independent nomination in any political subdivision, and excepting that not more than one thousand five hundred electors shall be required to make an independent nomination for a borough or county office.

**Derivation:** Election Law, pt. of § 57, as amended by L. 1999, ch. 363, § 1; L. 1931, ch. 454, § 4.

**Amended by** L. 1911, ch. 491, § 62; L. 1913, ch. 500; L. 1918, ch. 323; L. 1920, ch. 881, in effect May 21, 1920.

**Construction.**—This section was meant to cover all offices and should not be otherwise construed. *Matter of Fagan*, 21 Misc. 403, 47 N. Y. Supp. 285.

The laws relating to independent nominations should be liberally construed. *Matter of Adams* (1897), 21 Misc. 326, 47 N. Y. Supp. 543.

The provisions of this section contemplate only a single certificate of independent nominations for state officers, which must be subscribed and verified by at least fifty electors of each of the counties of the state, counting Fulton and Hamilton as one. *Matter of McDonald* (1898), 25 Misc. 80, 64 N. Y. Supp. 600.

**Independent nomination of alderman in New York city.**—Where it appears that an assembly district and an aldermanic district in the city of New York are coterminous, the statutory rule requiring 500 signatures to a certificate of independent nomination for the office of member of assembly will, by analogy, be deemed applicable to an independent nomination for the office of alderman. *Matter of Glottha* (1903), 108 App. Div. 278, 93 N. Y. Supp. 616; *Matter of Fagan* (1897), 21 Misc. 403, 47 N. Y. Supp. 285.

Although the charter of the city of New York has been altered since the Election Law was enacted so as to provide for the election of an alderman in a district of less extension than a ward, and there is no specific provision in the Election Law for the making of independent nominations in an official district smaller than a town, ward or village, such nomination is embraced within the scope of that part of the above section which provides for independent nominations or candidates for public office to be voted for only by the electors of a town, or ward of a city or village. *People ex rel. Behrmann v. Verrill* (1901), 168 N. Y. 367, 61 N. E. 283, aff'd 65 App. Div. 11, 72 N. Y. Supp. 293.

The office of justice of the Municipal Court of the City of New York is an office in the judicial system of the State and is not a borough or county office. Hence, an independent certificate of nomination for said office must be subscribed by not less than five per centum of the total number of votes cast for governor at the last gubernatorial election in the district (not exceeding 3,000 electors), as required by section 122 of the Election Law, and a certificate submitted by less than said number of persons is insufficient to entitle the candidate to have his name printed upon the ballot. *Matter of Richards* (1917), 179 App. Div. 828, 167 N. Y. Supp. 152, aff'd 221 N. Y. 684.

A justice of the Municipal Court, borough of The Bronx, is neither a borough nor a county officer and hence the number of signatures to an independent certificate of nomination to that office is not governed by that portion of the section which makes the signatures of 1,500 electors sufficient for an independent nomination. The requisites of the certificate are those stated in the prior portion of the section which makes the signatures of five per cent of the total number of votes cast for governor at the last gubernatorial election in the Municipal Court district, or 3,000 signatures, essential to a valid nomination. *Matter of Greenwald v. Boyle* (1917), 179 App. Div. 612, 167 N. Y. Supp. 154.

The expression "political subdivision of the state," as used in said section, applies to the district from which any public officer is to be elected. *Matter of Richards* (1917), 179 App. Div. 828, 167 N. Y. Supp. 152, aff'd 221 N. Y. 684.

**Independent nomination of supervisor.**—As to number of signatures necessary in order to make an independent nomination for the office of supervisor see Report of Atty.-Gen. (1903), 434.

**Right to nominate by independent certificate.**—A political body which has acquired the right to nominate by primary and convention thereby loses its

right to nominate by independent certificate of nomination, continuing during the period in which the party nominating status or strength of 10,000 voters or office of governor is retained. Opinion of Atty.-Gen., rendered Feb. 15, 1907.

As to nomination of regular party candidates by independent party, see *Fernbacher v. Roosevelt* (1895), 20 Hun 411, aff'd 14 Misc. 199, 35 N. Y. Sup. 808.

**Conflicting nominations.**—When there is a contest over two certificates signed by different nominators, the preference of the committee in charge of the general ticket should have great weight in determining who shall be candidate in that election. *Matter of Folks* (1909), 134 App. Div. 376, 119 N. Y. Supp. 71, aff'd 196 N. Y. 540.

A certificate filed with the Board of Elections, nominating candidates of another party, who are in opposition to the ticket on which they desire to be placed, should not be recognized merely because it is the first certificate filed. *Matter of Folks* (1909), 134 App. Div. 376, 119 N. Y. Supp. 71, aff'd 196 N. Y. 540.

**Validity of independent certificate.**—Where the progressive party authorities fail to nominate a candidate for supreme court justice and subsequently a certificate signed by the requisite number of electors of said party was duly filed, each signer making oath to support such candidate at the polls, the court is not justified in declaring such certificate invalid, it having been filed in time with the secretary of state. *Matter of Hasbrouck* (1912), 77 Misc. 677.

**Constitutionality.**—The election law in so far as it requires independent nominations for candidates for public office, other than municipal candidates, to be voted for in a district less than the whole state, but greater than a town or ward of a city and for a candidate for member of assembly, to be signed by more than five hundred voters, is unconstitutional and void. *People ex rel. Hotchkiss v. Smith* (1912), 200 N. Y. 231.

The amendment of 1911 requiring the signatures of 1,500 voters for a valid independent nomination, other than for municipal offices to be voted for in a district less than the whole state, but greater than a town or ward of a city, except that 800 voters or more of an ascertainable district may make such nomination for member of assembly to be voted for in such district, is unconstitutional and void, because in some districts of the state the requirements of the statute are such as unreasonably to deny the electors equality of opportunity to vote for the candidate of their choice. *People ex rel. Hotchkiss v. Smith* (1912), 152 App. Div. 514.

While the scheme of the 1911 amendment may not operate to hinder unreasonably the electors in some districts, the court will not attempt to separate the good from the bad and the act must fall as a whole. *People ex rel. Hotchkiss v. Smith* (1912), 152 App. Div. 514.

The amendments made to section 122 of the Election Law in 1911 and 1913 do not violate the Constitution, but prescribe a general plan for independent nomination to which the court must give effect. *Matter of Richards* (1917), 179 App. Div. 823, 167 N. Y. Supp. 162 aff'd 221 N. Y. 684.

**Waiver of defendant as to number of signatures.**—Persons seeking to review an independent political nomination may waive in open court any objection that might be made upon the ground that the number of persons signing the petition is insufficient under the Election Law. *Matter of O'Brien* (1912), 152 App. Div. 856.

**Number of signatures for judicial nomination.**—It seems that 900 signers to a petition for an independent nomination for justice of the supreme court is not sufficient and that the statute requiring 1,500 signers is not unconstitutional. *Matter of O'Brien* (1912), 152 App. Div. 856.

**Right of electors to make nominations after political organization has failed to do so.**—The failure of the National Progressive party, an incorporated independent political organization, and its committee, to make any nomination for justice of the supreme court in the third judicial district did not bar the members of the party from making it. Such nomination would be invalid if it were shown that the signers of the petition were outsiders, not members of said party and were attempting to appropriate its emblem to themselves. *Matter of O'Brien* (1912), 152 App. Div. 856.

**Nomination of candidate nominated on other ticket.**—Where the Progressive party failed to make the nomination for justice of the supreme court, the

members of said party had a right to nominate a candidate notwithstanding that such candidate had also been nominated for the same office by another political party and it is not necessary that the electors who signed the petition nominating the state and local officers within a judicial district shall be the same persons that signed the petition nominating a justice of the supreme court. *Matter of O'Brien* (1912), 152 App. Div. 866.

Several nominations in one petition. - It is improper to include in a petition nominating a justice of the supreme court other nominations not to be elected within the district, for it is improper to include in one petition candidates to be voted for in several districts not coterminous. *Matter of O'Brien* (12-2), 152 App. Div. 856.

Section cited. - *Matter of Burr v. Voorhis* (1920), 229 N. Y. 382.

# § 123. Independent certificates of nomination.

1. Independent nominations shall be made by a certificate subscribed by the required number of such electors, each of whom shall add to his signature his place of residence and make oath that he is an elector and has truly stated his residence. The making of the said oath shall be proved by the certificate of the notary or other officer before whom the said oath is taken, and it shall be unnecessary for an elector who has subscribed a certificate of nomination, as herein provided, to sign any affidavit as to the matter to which he has made oath as aforesaid. The certificate hereinbefore provided for of the notary or other officer shall be in the following form substantially:

"State of New York,

"County of ..... ss.:

"On the .... day of ....., in the year ....., before me personally came (here shall be inserted the names of each and every elector appearing and making oath before the said officer), each of whom was to me personally known and known by me to be the elector whose name and place of residence is subscribed by him to the foregoing certificate and each of the foregoing electors being by me duly and severally sworn did make oath that he is an elector and has truly stated his residence, and that it is his intention to support at the polls the candidacy of the person or persons nominated for public office in the foregoing certificate of nomination.

"(Signature and official title.)"

2. As an alternative method of authentication, in lieu of such acknowledgment, provision may be made in such nominating certificate for a column under the title "witness," for the signature



of a witness opposite the names of signers of the certificate. There may be a subscribing witness for any signature, and the same person may act as witness for any number of signers. No person shall be qualified to act as such witness unless he shall be a freeholder within or shall have been for the last preceding five years a resident of the county in which the person resides whose signature he is witnessing; nor unless he shall have been registered either from the same address or within the same election district for the last preceding two general elections, or the territory of such election district as defined at the time of the first of such two registrations; nor unless his good character and honesty are certified to as provided below either by at least one-half of the candidates whom the certificate nominates or by the committee to fill vacancies named therein, which certificate of good character and honesty must be filed with the board or officer with whom the nominating certificate is filed. Such witness must sign his name in the presence of the voter whose name he is witnessing and must thereafter appear before an officer authorized to administer oaths and take acknowledgments and make the following affidavit to be attached to the nominating certificate:

"State of New York,

"County of ..... ss.:

"On this ..... day of ....., in the year ....., before me personally came (here insert name of witness), to me personally known, who, being by me duly sworn, did depose and say that he knew each of the voters whose names and places of residence are subscribed to the foregoing nominating certificate, as to whose signatures deponent has signed as a witness above, and deponent makes oath that he saw each of them sign the same, and that each such voter on signing such certificate declared to deponent that it was his intention to support at the polls the candidacy of the person or persons nominated for public office in the foregoing nominating certificate; and that deponent thereupon signed his name as a witness thereto in the presence of each such voter.

Said deponent does also make oath that he is (here state his qualifications to act as a witness as above provided) and that he has been registered for the last two general elections as follows: For the general election of 19.. I was registered from (state



address) in the election district of the ..... assembly district, county of ....., State of New York. For the general election of 19.. I was registered from (state address) in the election district of the ..... assembly district, county of ....., State of New York.

.....  
(Signature of witness.)

Subscribed and sworn to before me,  
this ..... day of .....

.....  
(Official title of officer.)

3. The certificate to the good character of the witness must be substantially as follows:

The undersigned hereby certifies to the good character and honesty of the following named person acting as witness to signatures upon a nominating certificate for the next ensuing election:

	Permanent		Business
	residence of	Business of	address of
Name of witness	witness	witness	witness
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

I certify that I have known the said witness for (here state length of acquaintance) and that all the facts herein stated as to the character, honesty, residence, business and business address of the witness certified to, are stated upon my knowledge.

Dated .....

(Signature) .....

(Residence) .....

If the person making such certificate of good character and honesty has not personal knowledge of all such facts, his certificate may nevertheless be accepted, provided he shall state therein that any fact, specifying it, not made on his personal knowledge, is made in good faith upon information received from another person whom he names, and further provided that he attaches a certificate of such other person in substantially the foregoing form stating such fact or facts upon personal knowledge. Such other person must be a qualified elector of the district for which the nomination is made.

4. Any such witness, candidate, member of committee to fill vacancies or other person, who makes a false affidavit, certificate or statement as thus provided for, and any officer authorized by law to take acknowledgments and affidavits who knowingly signs a certificate to a false affidavit, certificate or statement, is guilty of a misdemeanor and shall be punished by imprisonment for a term of not less than three months.

5. The certificate of nomination and each separate paper thereof, if there be more than one such paper, shall contain the following declaration which shall be subscribed by the signers thereof:

"We the undersigned duly qualified electors of the district for which the nomination for public office is hereby made under the provisions of sections one hundred and twenty-two and one hundred and twenty-three of the election law do hereby declare that it is our intention to support at the polls the candidacy of the person or persons herein nominated for public office."

The certificate shall also contain the titles of the offices to be filled, the name and residence of each candidate nominated, and if in a city, the street number of such residence and his place of business, if any; and shall designate in not more than five words the political or other name which the signers shall select, which name shall not include the name of any organized political party.

A certificate may designate upon its face one or more persons as a committee to represent the signers thereof, for the purposes specified by section one hundred and thirty-five of this article. The signatures to the certificate of nomination need not all be appended to one paper. No person shall join in nominating more candidates for any one office than there are persons to be elected thereto, and no certificate shall contain the names of more candidates for any office than there are persons to be elected to such office.

6. The name of no person signing an independent certificate of nomination shall be counted unless such person shall on one of the days of registration in such year be registered as a qualified elector, and in case a candidate nominated by an independent certificate of nomination be at the time of filing the said certificate or afterwards the candidate of a political party for the same office the name of no person who is an enrolled member of such political party shall be counted, except where such nomination is afterwards made by a party committee or committee to fill vacancies. For the purpose of ascertaining whether the person whose name appears on an independent certificate of nomination signed such certificate, the affidavit or testimony of such person that he did not sign such certificate shall be prima facie evidence that he did not sign such certificate. If the name of a person who has signed a certificate of independent nomination appear upon another certificate nominating the same or a different person for the same office, it shall not be counted upon either certificate.

**Derivation:** Election Law, pt. of § 57, as amended by L. 1899, ch. 363, § 1; L. 1901, ch. 654, § 4.

**Amended by** L. 1911, ch. 649; L. 1916, ch. 537; L. 1918, ch. 323, in effect Apr. 24, 1918.

**Consolidators' note.**—The sentence requiring the adoption of an emblem by independent bodies is omitted, for the reason that this requirement is amply covered by section 124, which now relates by position as well as in express terms to emblems of parties and independent bodies equally.

**Cross-references.**—Misconduct in relation to certificates of nomination. Penal Law, § 760 (part 5, post). See also notes to Election Law, §§ 121, 124 and 125.

**Forms.**—Forms of independent certificate of nomination. See Forms (part 12, post).

**Constitutionality of section.**—The provisions of this section that "the signatures to a certificate of nomination need not all be appended to one paper" and that "no separate sheet comprising an independent certificate of nomination, where such certificate consists of more than one sheet, shall be received and filed with the custodian of primary records if five per centum of the names appearing on such sheet are fraudulent or forged," is not unconstitutional because individual nominations are not constrained to subject themselves to its operation. They may all sign a single sheet or each may sign a sheet by himself. *Matter of Burke v. Terry* (1911), 203 N. Y. 293.

**The primary function** of the independent certificate of nomination is to indicate that a certain percentage of the qualified voters intend to support the candidate. *Matter of Lynch* (1919), 108 Misc. 668, 178 N. Y. Supp. 30.

**Requiring nominator to be registered is valid.**—The provision of the 1911 amendment that no person signing an independent certificate of nomination shall be counted unless such person shall on one of the days of registration in such year not be registered as a qualified elector tends to prevent fraud and to make more certain the good faith, of the persons seeking to present to the voters independent candidates for office. A person signing an independent certificate of nomination should be counted if he registers in such year either before or after signing such certificate. *People ex rel. Hotchkiss v. Smith* (1912), 206 N. Y. 231, aff'g 152 App. Div. 514.

**Placing name of candidate on other ticket is valid.**—The provision of the 1911 amendment which requires that in case a candidate nominated by an independent certificate of nomination be at the time of the filing of such certificate or afterwards a candidate of a political party for the same office, no person who is an enrolled member of such political party shall be counted, is not an unreasonable provision. *People ex rel. Hotchkiss v. Smith* (1912), 206 N. Y. 231, aff'g 152 App. Div. 514.

**Signing two or more independent certificates.**—The provision of the 1911 amendment that no person shall join in nominating more candidates for one office than there are persons to be elected thereto, when construed as only intended to prevent an elector from signing two independent nominating petitions for the same office, is not unreasonable. *People ex rel. Hotchkiss v. Smith* (1912), 206 N. Y. 231, aff'g 152 App. Div. 514.

**Statutes now in force as to independent nominations.**—Section 57 of chapter 680 and section 57 of chapter 909 of the laws of 1896, relative to number of signatures required upon a certificate for independent nomination are valid and constitutional and are now operative by reason of the unconstitutionality of such portion of section 122 as was so declared in *People ex rel. Hotchkiss v. Smith*, 206 N. Y. 231. *People ex rel. Woodruff v. Britt* (1912), 206 N. Y. 246.

**Construction.**—The provisions relating to certificates of nomination by independent bodies should be liberally construed. *Matter of McClosky* (1897), 21 Misc. 385, 47 N. Y. Supp. 294; *Matter of Bulger* (1905), 48 Misc. 584, 97 N. Y. Supp. 232. Report of Atty.-Gen., Oct. 2, 1909.

The requirements that independent nominations shall be made by a certificate subscribed by electors of the State who are entitled to vote therein, and that each of such electors shall add to his signature his place of residence, and make oath that he is an elector and has truly stated his residence, are matters of substance and must be strictly followed. *Matter of Adams* (1897), 21 Misc. 396, 47 N. Y. Supp. 543.

Provisions of sections 122 and 123 indicate the purpose of the Legislature to

exclude from recognition as political parties, so far as making nominations by primary or convention is concerned, all new political bodies until they have obtained a following of ten thousand voters in a state election as attested on the vote for governor. Until a political party movement shall acquire that strength it must act in making nominations as an independent political body, and by independent certificate of election signed directly by electors. In such a case, also, the certificate may not use or include the name of any organized political party. It was the apparent purpose of that provision to prevent a political body from acting in the making of nominations as an independent political body if it has acquired the status entitling it to nominate by primary and convention. But a political body which has acquired the right of nominating by primary and convention thereby loses its right to nominate by independent certificate of nomination, continuing during the period in which the party nominating status or strength of ten thousand votes on office of governor retained. Report of Atty.-Genl. (1907), 278 279.

**Validity and sufficiency of certificate.**—A certificate of independent nomination composed of several separate sheets, firmly bound together, constitutes but one separate paper within the meaning of this section and it is not necessary that there should appear upon each separate sheet thereof the declaration of the signers that it is their intention to support at the polls the candidacy of the person or persons therein nominated for public office. Matter of Bulger (1905), 48 Misc 584, 97 N. Y. Supp. 232.

A certificate is not invalid because the requisite number of signatures are not found on a single sheet nor because more than one candidate is named in the same certificate. Matter of Fitzgerald (1906), 51 Misc 491, 100 N. Y. Supp. 753; Matter of Farrell (1906), 51 Misc. 493, 100 N. Y. Supp. 754; Matter of Bennet (1907), 116 App. Div. 138, 102 N. Y. Supp. 333.

A certificate of independent nomination is not defective because some of the signers took the oath and acknowledgment before certain notaries who were nominated therein as candidates for office. Matter of Bulger (1905), 48 Misc 584, 97 N. Y. Supp. 232.

Where sheets of two certificates for separate offices are joined together, the signatures being the same on each, it should appear from the notary's certificate that persons who subscribed both certificates appeared and made oath before such officer as to each certificate. Matter of Independence League Nominations (1906), 51 Misc. 486, 100 N. Y. Supp. 760.

Indecipherable and illegible signatures to a certificate of nomination should be rejected, although the commissioner of elections may use the notary's certificate to aid him reading them, and illiterate electors should sign by a mark properly authenticated. Matter of Independence League Nominations (1906), 51 Misc. 486, 100 N. Y. Supp. 760.

The places of residence which the subscribers of a certificate of nomination respectively, add to their signatures are conclusive; and where it appears upon the face of the certificate that the place of residence of a subscriber is outside the district, the commissioners should reject his name and may not resort to extrinsic evidence to show the fact that he resides in the district. Matter of Independence League Nominations (1906), 51 Misc. 486, 100 N. Y. Supp. 760.

The fact that some of the sheets of a certificate of nomination were delivered to the commissioner of elections on one day and the rest on the day following which was the last day for filing such certificates does not render the certificate invalid. Matter of Independence League Nominations (1906), 51 Misc. 486, 100 N. Y. Supp. 760.

When a sufficient number of signatures have been attached by competent evidence establishing that the signers were nonresidents so as to bring the number below that required by the statute, the certificate is insufficient, affidavits showing that certain sheets were lost are insufficient to make up the deficiency in the absence of proof of the names of the signers and that any of them did sign the paper, or that it was properly executed and acknowledged. *Matter of Quimby* (1906), 116 App. Div. 142, 102 N. Y. Supp. 201.

Where a large number of signers to certificates of independent nominations made oath that they were duly qualified electors of the district for which the nominations were made and added their street number and named their Assembly and Senate districts, it was held that such additions to their signatures were sufficient designations of their residences, although the city and borough were omitted. *Matter of Farrell* (1906), 51 Misc. 493, 100 N. Y. Supp. 754.

A certificate is not to be rejected because the districts of all the candidates are not coterminous, and every elector who subscribes to it may not, therefore vote for all the offices named therein. *Matter of Farrell* (1906), 51 Misc. 493, 100 N. Y. Supp. 754.

A certificate purporting to nominate several candidates for distinct offices to be voted for in several districts not coterminous does not comply with this section. *Matter of Bennet* (1907), 116 App. Div. 138, 102 N. Y. Supp. 353.

It is impossible to treat a certificate purporting to nominate several candidates for distinct offices to be voted for in several districts not coterminous as sufficient to nominate for one office therein named, and to treat the attempt to nominate for other offices as surplusage. *Matter of Bennet* (1907), 116 App. Div. 138, 102 N. Y. Supp. 353.

It is intended that the certificate naming a candidate for election in any particular district should be confined to nominating candidates in that particular district, whether the district comprises the whole state or lesser territory. *Matter of Bennet* (1907), 116 App. Div. 138, 102 N. Y. Supp. 353.

If any person joins in a certificate of independent nomination who has joined in a certificate nominating another candidate for the same office, his signature must be disregarded. *Matter of Smith* (1903), 41 Misc. 501, 85 N. Y. Supp. 14.

Where the persons signing a certificate of nomination do not subscribe the oath required by the statute, the certificate has no apparent conformity with the statute and may properly be rejected on that account, although regular in all other respects. *People ex rel. Oliver v. Police Commissioners* (1894), 10 Misc. 200, 64 N. Y. St. Rep. 21, 31 N. Y. Supp. 467.

The oaths attached to certificates of independent nominations must be signed by the persons making such nominations, and must be filed with the certificates. *People ex rel. Klinker v. Police Com'r* (1893), 31 N. Y. Supp. 469.

When certificates of independent nominations are required to be filed in the same office, one of such certificates is not invalid because made for the nomination of more than one candidate, where the electors making it are qualified to make a certificate for the nomination of all the candidates named therein. *Matter of Independent Nominations* (1906), 146 N. Y. 268, rev'g 133 App. Div. 463.

The certificate of oath to a certificate of nomination is good, though it does not state that the signers were known to the notary or other



officer making it or that he saw them sign. *Matter of McTosky* (1897), 21 Misc. 365, 47 N. Y. Supp. 294.

A certificate of oath to a certificate of nomination which states that each signer made oath that he was "an elector" will be construed, in connection with the certificate of nomination, to mean an elector of the district or territory in which the nomination is being made. *Matter of McTosky* (1897), 21 Misc. 365, 47 N. Y. Supp. 294.

Though many electors signing a nomination certificate neglect to add their residences, if the requisite number add their places of residence to their signatures the certificate is not invalidated. *Matter of Fitzgerald* (1906), 51 Misc. 491, 100 N. Y. Supp. 753.

The signatures of unregistered electors to an independent certificate of nomination are effective if the time for them to register has not expired, at the time they sign, if the time to register has then expired, their signatures are ineffectual. *Matter of Horan* (1905), 108 App. Div. 269, 95 N. Y. Supp. 607.

Where a certificate of an independent nomination is insufficient, a committee, named in the certificate to fill any vacancy is not legally designated and has no power to fill a vacancy, occurring by the declination of the candidate attempted to be nominated. *Matter of Adams* (1897), 21 Misc. 205, 47 N. Y. Supp. 543.

Where a certificate of independent nomination is presented, the board of electors is not then called upon to determine upon the sufficiency of the number of signers. Such certificates must be filed when presented. *Matter of Murphy* (1919), 180 App. Div. 135, 175 N. Y. Supp. 236.

The certificate in question contained 1,391 names, 1,274 signatures were required, 1,148 of the signatures were improperly witnessed. There being no proof before the court that the witnesses did actually witness the bona fide signatures of qualified voters whom they personally knew in an aggregate number sufficient to meet the requirement of the statute and by mistake signed their names as witnesses in the wrong place, the court is without power to correct the certificate and to order the filing thereof as a valid petition. *Matter of Lynch* (1919), 108 Misc. 668, 178 N. Y. Supp. 30.

When authenticating witnesses to a certificate of independent nomination sign their names up and down the page perpendicular to the signatures of the electors instead of opposite thereto, the provisions of § 123 are not complied with. *Matter of Lynch* (1919), 108 Misc. 668, 178 N. Y. Supp. 30.

Where a petition is filed in two sections, the fact that no certificate of good character is attached to one of them is an excusable omission that may be cured. *Matter of Lynch* (1919), 108 Misc. 668, 178 N. Y. Supp. 30.

Where some of the signers of the certificate of nomination were women, their failure to sign their Christian names is an excusable omission which is curable upon submission of proper proof by the signers. *Matter of Lynch* (1919), 108 Misc. 668, 178 N. Y. Supp. 30.

**Name and emblem.**—Where there is a contest between several sets of local Independence League nominations, the certificate first filed under that title is entitled to preference, provided that it was filed by the same "independent body." *Matter of Ind. Nominations* (1906), 146 N. Y. 268, rev'g 103 App. Div. 463.

When a body of voters meets for the purpose of organizing an independent ticket and a committee has been appointed which adopts an emblem and a name and subsequently files a petition naming a candidate for the head of the ticket and a committee has been appointed to take charge of the canvass and nomination, the name and emblem adopted by such committee and the persons representing them are to be considered as belonging to that political movement. *Matter of Folks* (1909), 134 App. Div. 376, 119 N. Y. Supp. 71, aff'd 194 N. Y. 540.

Electors in several districts, who are in general sympathy with the nominators of the city, county and borough candidates, have a right to nominate by petition district candidates and to adopt the same name and emblem as that chosen by nominators of the general candidates. *Matter of Wechsler* (1909), 134 App. Div. 378, 119 N. Y. Supp. 71.

All electors who hold the same general political views as the city, county and borough candidates have a right to use the same name and emblem for district candidates. *Matter of Wechsler* (1909), 134 App. Div. 378, 119 N. Y. Supp. 71.



Where district nominations are made by two different nominators, both claiming to be in general sympathy with the city, county and borough candidates, the views of a committee appointed at a mass meeting to nominate the city, county and borough candidates are entitled to great weight on the question as to which of the district nominees are in sympathy with the general ticket. *Matter of Wechsler* (1909), 134 App. Div. 378, 119 N. Y. Supp. 79.

Neither the board of elections nor the court can interfere with the use of a name and emblem selected by an independent party in its certificate of nomination unless some reason is shown why the name or emblem should not be used, or unless some other party has a prior right thereto. *Matter of Wechsler* (1909), 134 App. Div. 378, 119 N. Y. Supp. 79.

Where a number of independent electors have adopted an emblem and the name of "Square Deal Party" and nominated a candidate for mayor of the city of Syracuse and a committee representing them has been chosen to fill out the remainder of the ticket, the regular Republican candidate for assemblyman may not procure a petition nominating him for the assembly as an independent candidate under the name and emblem of the "Square Deal Party," without the consent of such committee and by filing the petition first, acquiring the right to have his name upon the ticket under such party name and emblem. *Matter of Com'r of Elections* (1909), 64 Misc. 620, 120 N. Y. Supp. 580.

**Use of name of any organized political party**—This section absolutely prohibits a certificate of independent nomination from including the name of any organized political party, and a certificate filed in 1903 which stated the words selected for the designation of the independent party as "The Independent Republican Party" is a clear violation of the statute. *Matter of Smith* (1903), 41 Misc. 501, 83 N. Y. Supp. 14.

Use of the name "National Democratic Party" held not a violation of the rights of the "Democratic party." *Matter of Greene* (1896), 9 App. Div. 222, 41 N. Y. Supp. 177.

The adoption by a body of independent voters in a certificate of nomination for a member of assembly of the name "Independent Democratic Party" violated this section, as it includes the name of an organized political party. *Matter of Carr* (1904), 94 App. Div. 493, 88 N. Y. Supp. 107.

The name "Social Democratic Party" is substantially the same as "Democratic Party," and the use thereof is prohibited by this section. *Matter of Social Democratic Party* (1905), 182 N. Y. 442, rev'g a c. 105 App. Div. 243, 94 N. Y. Supp. 1023, which aff'd 45 Misc. 194, 91 N. Y. Supp. 941.

The name used in this state should be amended by conforming it with that of the national party of which the local party is a branch. *Matter of Social Democratic Party* (1905), 182 N. Y. 442, rev'g 105 App. Div. 243, 93 N. Y. Supp. 1023, which aff'd 45 Misc. 194, 91 N. Y. Supp. 941.

**Qualification of assembly nominee.**—Whether a nominee is disqualified because he is a commissioner of deeds must be determined by assembly. If he is elected as a member of assembly. *Matter of Independent Nominations* (1906), 186 N. Y. 288.

**Qualifications for signing independent petition.**—To disqualify an elector for signing an independent petition, he must not only have voted at the primary election, but he must have voted for a candidate for the office sought to be filled by the petition or for delegates to a convention called to name such a candidate. *Matter of Commissioner of Elections* (1900), 64 Misc. 620, 120 N. Y. Supp. 580.

Participation in a so-called caucus choosing independent nominees does not debar the participant from joining in the execution of an official certificate of an independent nomination. *Rept. of Atty-Gen.* (1911), Vol. 2, p. 269.

After participating in one independent nomination a voter is disqualified from participating in another independent nomination to the same office. *Rept. of Atty-Gen.* (1911), Vol. 2, p. 248.

An elector to be qualified to sign a certificate of independent nomination need not have been registered at the time; it is sufficient if he

registers before his name is counted. *People ex rel. Steimert v. Britt* (1911), 146 App. Div. 683.

Under subd. 6 of § 123, as amended by L. 1910, ch. 537, providing, among other things, that the name of no person signing a certificate of independent nomination shall be counted unless such person shall be registered, the right of a person so nominated to have his name printed on the official ballot depends upon, among other things, whether before or after filing the certificate of nomination a sufficient number of electors signing the same shall be registered on ballot register. Although a person so nominated fails to show that a sufficient number of his nominators have registered, but it appears that the period for registering has not expired, public policy requires that the court entertain his application to have his name printed on the official ballot in advance of the completion of the registration, so that all questions presented relating to the validity and sufficiency of the certificate of nomination may be promptly decided, leaving only the question with respect to registration. *Matter of McGrath* (1919), 189 App. Div. 140, 178 N. Y. Supp. 231.

Where the signatures of certain qualified voters to a petition for nomination were challenged solely on the ground that the subscribing witness was not registered in 1917 and 1918 but there is nothing to justify a finding that the statement in his affidavit, which complies in every respect with the statute that he was registered in both years, is not true, an application to have the petition declared invalid will be denied. *Matter of Bassett* (1919), 108 Misc. 461, 177 N. Y. Supp. 738.

A candidate for the nomination for alderman may act as subscribing witness to the signers of his own petition. Where he acts as subscribing witness to the signatures of qualified voters the certificate of "good character" required to be signed by the candidate or committee on vacancies when signatures to a petition for nomination are acknowledged by a subscribing witness, is unnecessary. *Matter of Bassett* (1919), 108 Misc. 461, 177 N. Y. Supp. 738.

Where by the affidavit of an authenticating witness charged with not being registered for the year 1918 it appears that he was in the military service at the time and was registered and voted that year in a military camp, such registration is sufficient under § 123 to qualify him as a witness to a certificate of independent nomination. *Matter of Lynch* (1919), 108 Misc. 658, 178 N. Y. Supp. 30.

**Fraudulent and forged signature.**—Where five per cent. of the names of the subscribers appearing upon a given sheet are fraudulent and forged, such sheet shall not be considered a valid part of the nominating certificate notwithstanding that the remaining signatures thereon are genuine. *Matter of Terry* (1911), 146 App. Div. 520, 521, aff'd 203 N. Y. 293.

The provisions of this section with reference to validity of sheets where five per centum of the names appearing thereon are fraudulent or forged has no application to a signer who has failed to register. The statute does provide that his name shall not be counted and the court is not warranted in holding that such failure to be a legal fraud within the meaning of this section. The duplication of names, however, must be regarded as fraudulent under the statute and the same cannot be counted wherever such duplication appears. *Matter of Independent Certificate (Mayor of Cohoes)* (1912), 78 Misc. 94.

As to when independent certificate will be declared void by reason of names of persons not registered and duplicated names, see also, *Matter of Independent Certificate (Assessors of Cohoes)* (1912), 78 Misc. 86.

Where, after a certificate for independent nomination for member of assembly had been signed and verified by 519 electors, it was discovered that the candidate was ineligible for the office and without authority from any of the signers the name and address of another person was pasted over the name and address of the original address and without further signature and verification said certificate was filed with the board of elections, the certificate "is fraudulent and forged," within the meaning of this section, as to every name appearing thereon and is to no effect. That the person who made the change acted in good faith under legal advice does not alter the legal effect of his act. *Matter of Shook* (1912), 78 Misc. 80.

**Evidence of signature by election.**—Although section 123 provides that an affidavit by an elector that he did not sign the sheet shall be "prima facie evidence" that he did not do so, the same effect is to be given to each form of expression. Both the notarial certificate and the affidavit are prima facie, not conclusive evidence of the fact of signature which, when questioned, is to be determined by the court. *Matter of Terry* (1911), 146 App. Div. 520, 521, aff'd 223 N. Y. 293.

Section cited.—*Matter of Burr v. Voorhis* (1920), 229 N. Y. 382.

### § 124. Emblems.

It shall be the duty of the state committee of a party to select some simple device or emblem to designate and distinguish the candidates of the party for public office. Such device or emblem shall be shown by a representation thereof upon a certificate signed and duly executed by the chairman and secretary of such state committee, which certificate shall be filed with the secretary of state, and such device or emblem, when so filed, shall in no case be used by any other party or any independent body. When any independent body shall make a nomination of a candidate or candidates to be voted for by the voters of the entire state, it shall be the duty of the persons who shall sign and execute the certificate of nomination of such candidate or candidates, to likewise select some simple device or emblem to designate and distinguish the candidate of such independent body making such nomination, and such device or emblem shall be shown by the representation thereof upon such certificate of nomination. The device or emblem so chosen, when filed as aforesaid, shall be used to designate and distinguish all the candidates of the same party or independent body nominated by such party or independent body, or duly authorized committee or primary thereof, in all districts of the state and shall continue to be used to designate and distinguish the candidates of such party or independent body in all districts of the state until changed by the state committee of the party or by the independent body choosing such device or emblem. The device or emblem chosen as aforesaid may be a star, an animal, an emblem, or any other appropriate symbol, but neither the coat of arms or seal of any state or of the United States, nor the state or national flag, nor any religious emblem or symbol, nor the portrait of any person nor the representation of a union or of the currency of the United States shall be chosen as such distinguishing device or emblem.

Existing devices or emblems, heretofore chosen pursuant to law, shall continue until changed in the manner provided in this section as hereby amended.

**Derivation.** Election Law, pt. of § 56 as amended by L. 1908, ch. 235; L. 1901, ch. 654. Amended by L. 1913, ch. 820, in effect Dec. 17, 1913.

**Consolidators' note.**—"A certificate signed and duly executed by the proper parties authorized for that purpose," at the end of the sentence imposing the duty of selecting an emblem on an independent body, is changed to "such certificate of nomination," for the reason that there can be no "proper parties authorized for that purpose," but the emblem is included in the original nominating petition. The expression may have been intended to include the case of action by a committee designated "for the purposes specified by section sixty-six" (new §§ 135 and 134). The exceptional case is fully guarded in the sections governing it.

**Purpose of emblem.**—The object of the Election Law is to secure to each voter the right to cast his ballot for the party of his choice, and to this end the emblem is required, so that the illiterate voter may be secure in his choice, and the designation by name is made for the benefit and security of the voter who can read. *Matter of Greene* (1896), 9 App. Div. 223, 41 N. Y. Supp. 177.

**Right to emblem.**—The Independence League, having selected the balance scale as an emblem, and filed valid certificates of nomination for certain offices selecting that emblem, its right to such emblem is secured; and it is immaterial whether the League certificate of nomination for member of congress was filed before the certificate of another candidate for that office, selecting the same emblem, as the League candidate has a better right to such emblem. *Matter of Fitzgerald* (1906), 31 Misc. 491, 110 N. Y. Supp. 753.

Officer with whom certificates are filed may select, where conflicting nominations are made between two conventions, each claiming to regularly represent a political party. *People ex rel. Ward v. Roosevelt* (1897), 151 N. Y. 369.

The affidavits of the executive officers of an independent party, like the Independence League, are competent evidence as to whether particular candidates are the legitimate candidates of that party and entitled to the benefit of the party name and emblem. *Matter of Quimbly* (1906), 116 App. Div. 142, 102 N. Y. Supp. 201.

When a petition signed by independent electors, and which includes the entire Democratic ticket, is supported by a sufficient number of electors to entitle the candidate to a place on the official ballot, it is entitled to be placed in a separate column under the name and emblem to be selected as directed by the statute. *Matter of Brevillier* (1906), 116 App. Div. 144, 102 N. Y. Supp. 217.

A large body of independent voters who entertain the same political views and who act in harmony and nominate a complete ticket of candidates favorable to their choice to be voted for at an approaching city election, held in conjunction with the state election, are entitled to have all their nominees both for city and state offices placed in the same column under the same emblem. *Matter of Wise* (1905), 108 App. Div. 52, 95 N. Y. Supp. 843.

The persons executing the respective certificates of nomination are for the purpose of selecting a name and an emblem for use upon the official ballot, to be regarded as one and the same "independent body." *Matter of Wise* (1905), 108 App. Div. 52, 95 N. Y. Supp. 843.

An emblem on a certificate of nomination although resembling the profile of "Liberty" as used on some of the earlier coins, held not to be in violation of this section. *Rept. of Atty.-Gen., Oct. 2, 1909.*

### § 125. Conflict in names or emblems.

If two or more different parties or independent bodies shall select the same, or substantially the same, device or emblem or party name, the supreme court or any justice thereof within the judicial district or any county judge within his county shall decide which of said parties or independent bodies is entitled to the use of such device or emblem or party name, being governed as far as may be in his decision by priority of selection in the case of the device or emblem, and of use in the case of the party name. If the other party or independent body shall present no other device or party name after such decision, the custodian of primary records shall select for such other party or independent body another device or party name, so that no two different parties or nominating bodies shall be designated by the same device or party name. If there be a division within a party, and two or more factions claim the same, or substantially the same, device or name, the court or judge aforesaid shall decide between such conflicting claims, giving preference of device and name to the primary, body or committee thereof, recognized by the regularly constituted party authorities.

Except as herein otherwise provided, any question arising with reference to any device, or to the party or other name designated in any certificate filed pursuant to the provisions of this article, or with reference to the construction, sufficiency, validity or legality of any certificate, shall be determined upon the application of any citizen by the supreme court, or any justice thereof, within

the judicial district, or any county judge within his county, who shall make such order in the premises as justice may require, but the final order at special term must be made on or before the twelfth day or, in the case of a certificate of nomination of a town or village officer, the seventh day preceding the day of election. Such questions shall be heard upon such notice to such officers, persons or committees as the said court or justice or judge thereof shall direct.

The supreme court, at special term, in any judicial district in which two or more proceedings are pending in such district under the provisions of this section may, by order, consolidate all such proceedings and provide that further proceedings therein be had before such court at special term, in all cases where the question or questions involved are identical. If one or more of such proceedings be pending before a justice or county judge, notice of such order shall be forthwith given to such justice or judge.

This section shall not apply to a certificate filed pursuant to section one hundred and twenty when the question involves a determination as to the authority of a convention or committee or the legality or effect of its action. In such case, the question shall be determined in proceedings instituted under section fifty-six of this chapter.

Derivation: Election Law, pt. of § 56, as amended by L. 1898, ch. 336; L. 1901, ch. 664.

Amended by L. 1911, ch. 649; L. 1913, ch. 830; L. 1914, ch. 244; L. 1921, ch. 479 in effect May 2, 1921.

Cross-references.—As to use of name of any organized political party, see Election Law, § 123 and note. As to Emblems, see note to Election Law, § 124. See also notices to sections 121 and 122 of Election Law.

See, generally, *Matter of Werther* (1916), 94 Misc. 681, 158 N. Y. Supp. 321.

Disputes on legality of nominations, etc., by filing officer.—Where a dispute is owing to the substantial identity of names or emblems chosen by two political parties, it is to be determined by the officer with whom the certificates of nomination are filed. Under the statute such officer must decide the dispute by determining as a matter of fact the "priority of designation in the case of a device or emblem, and of use in the case of the party name" in perspective of the filing of the certificates. *Matter of Smith* (1901), 36 Misc. 2 71 N. Y. Supp. 463.

The provision authorizing the officer with whom certificates of nomination are filed to select the device or party name for factional candidates, applies where conflicting nominations are made between two conventions, each claiming to be regular representatives of a political party. *People ex rel. Ward v. Roosevelt* (1897), 151 N. Y. 369, 41 N. Y. Supp. 572.

Where questions of procedure in political conventions, or the regularity of committees are involved, which are regulated solely by party usages and customs, the officer called upon to determine such questions should follow the customs of the regularly constituted authority of the party, and courts in assuming the determination of such officers should not in any way interfere therewith. *Matter of Fairchild* (1897), 151 N. Y. 359, 45 N. E. 943, rev'd 2 Allen Div. 624.

If a notary public through inadvertence fails to swear some of the signers of the certificate of nomination, he may explain such error to the officer filing the certificate, by affidavit, and the officer is bound to accept the evidence and deduct the number of the persons who were not sworn from the total number of signers of the certificate. *Matter of Adams* (1897), 21 Mar. 398, 47 N. Y. Supp. 543.

The proceedings had before the officer filing the certificate are summary in their nature, and the rules, as to pleadings, objection or evidence, should not be strictly maintained as in a civil action. *Matter of Adams* (1897), 21 Mar. 398, 47 N. Y. Supp. 543.



The affidavit of a person, whose name appears upon the certificate of nomination, stating that he is the only person living at the street number given in the certificate, and that he never signed the certificate, should be received by the officer filing the certificate; and on affidavit of another signer that he never swore to the certificate should also be received. *Matter of Adams* (1897), 21 Misc. 396, 47 N. Y. Supp. 543.

If there are not fifty bona fide signatures to the certificate, properly attested, in each of the requisite counties, the nomination is invalid. *Matter of Adams*, 21 Misc. 396, 47 N. Y. Supp. 543.

Where the name adopted by a body of independent voters in a certificate of nomination for member of the assembly, includes the name of an organized political party, the county clerk has no power or authority to select another name in place of the one chosen and to place the nominee named in the certificate upon the official ballot as a candidate of such new party. *Matter of Carr* (1904), 94 App. Div. 493, 88 N. Y. Supp. 167.

Clerk with whom a certificate of nomination is filed may determine whether the parties named in such certificate are legal voters. Report of Atty.-Gen. (1904), 270.

**Proceedings to review determination of officer.**—These proceedings may be heard on affidavits. *Matter of Adams* (1897), 21 Misc. 396, 47 N. Y. Supp. 543.

The hearing, in a proceeding to review the determination of a filing officer, must be confined to papers upon which the original determination was based. *Matter of Fairchild* (1897), 151 N. Y. 359, 45 N. E. 943, rev'g 9 App. Div. 624. *Matter of Commissioner of Elections* (1909), 64 Misc. 620, 120 N. Y. Supp. 550.

It will be presumed in these proceedings that facts offered to be proved by affidavits presented to the officer filing the certificate and erroneously rejected by him were proved. *Matter of Adams* (1897), 21 Misc. 396, 47 N. Y. Supp. 543.

It is the duty of courts and judges entertaining proceedings under the Election Law to speedily decide the questions presented to them. *Matter of Hennessy* (1906), 164 N. Y. 793, rev'g 54 App. Div. 180.

Where a state nominating convention determines a political question the court will reverse the determination unless it is shown to have been the result of fraud or oppression. *Matter of Nash* (1902), 36 Misc. 113, 72 N. Y. Supp. 1037.

The objection that it does not appear affirmatively that notice of a primary election was published as required by the Primary Election Law cannot be taken for the first time on a review of the determination of the board of elections as to the result and particularly where the alleged defect was not specified in the petition for a review. *Matter of Kennedy* (1902) 36 Misc. 721, 74 N. Y. Supp. 369.

Notwithstanding the fact that an election has been held and a decision of the question involved in proceedings to review the decisions of a filing officer cannot effect the result of that election, yet, where the point at issue is one of public interest affecting the rights of all the voters of the state, the court will determine it. *Matter of Cuddeback* (1896), 3 App. Div. 103, 39 N. Y. Supp. 388.

A review of the determination of the officer filing a certificate of nomination may be had by a motion made on a petition filed. *Matter of Cuddeback* (1896), 3 App. Div. 103, 39 N. Y. Supp. 388.

In proceedings to determine the regularity of party nominations, the decl



action of party conventions, committees or caucuses are not binding and have no weight with the court. *Matter of Broat* (1894), 6 Misc. 443, 27 N. Y. Supp. 176. *In re Hancock* (1896), 18 Misc. 311, 41 N. Y. Supp. 161.

It is obviously impracticable for a board of elections, in the first instance, to procure a judicial determination of all questions arising with reference to the validity of every certicate of nomination, and where the board finds, on inspection, that a certificate of nomination is apparently so defective as to make it improper that the name of the candidate should be printed on the official ballot, orderly procedure requires that the board cause the candidate to be notified that his name will not so appear and leave it to him, if so advised, to apply to the court under § 125 for such an order in the premises as justice requires. *Matter of Murphy* (1919), 100 Misc. 68, 179 N. Y. Supp. 619.

While it is the duty of a board of elections to see that no name is improperly placed in nomination, it cannot, before registration is complete, finally decide whether or not a candidate's name should appear on the official ballot. *Matter of Murphy* (1919), 100 Misc. 68, 179 N. Y. Supp. 619.

**Jurisdiction.**—Under this section a court or judge has nothing to review unless there is a determination made by the board of elections in respect to the nomination of candidates. *Matter of Candidates for Member of Assembly in 32d Dist.* (1903), 104 App. Div. 361, 95 N. Y. Supp. 616.

The judicial district or county, within which to review the determination of the filing officer upon a contested certicate of nomination, is the district or county within which the complainant and respondent reside and where the transaction arose which was the subject of the determination. *Matter of Fairchild* (1897), 151 N. Y. 350, 45 N. E. 943, rev'g 9 App. Div. 624.

A political convention is a law unto itself but, where the duty is cast upon courts and judges to determine the regularity and fairness of political methods, those methods must be subjected to the same tests as would those of any other body of men whose good faith is questioned, and no court or judge would be justified in sustaining them when found to be inconsistent with that degree of sound morals which most characterize an ordinary affair of business, even though they be recognized and approved by senatorial and state conventions of the same political organization. *Matter of Woodworth* (1891), 16 N. Y. Supp. 147.

It is not in the province of the court to decide abstract questions of law in proceedings to review the determination of an official filing certificate of nomination, which could have no effect upon either candidate or upon the election. *Matter of Woodworth* (1892), 64 Hun 522, 19 N. Y. Supp. 525.

The question whether a person named in a certificate for an independent nomination is disqualified from election as member of assembly cannot be determined in a proceeding to review a determination of filing officers. *Matter of Independent Nominations* (1906), 186 N. Y. 258, rev'g 103 App. Div. 463.

Neither the Supreme Court nor a justice thereof has jurisdiction under this section to entertain a summary proceeding to determine the sufficiency of a petition filed by the town clerk requiring the submission of local option questions to the electors of a town. *Matter of Town of Newburgh* (1904), 97 App. Div. 438, 50 N. Y. Supp. 1065.

A citizen and prohibitionist voter who resides in the first judicial district may review there the adverse determination of the secretary of state although he resides in the third judicial district. *Matter of Gillespie v. McDonough* (1903), 19 Misc. 147, 79 N. Y. Supp. 182.

An application for an order overruling the decision of an officer with whom a certificate of nomination is filed is a special proceeding as defined by the Code of Civil Procedure, and the general term may entertain an appeal from an order affirming or overruling the determination of such officer, when the appeal can be heard and determined in due season. *Matter of Mitchell* (1894), 81 Hun 401, 30 N. Y. Supp. 962.

An order by a justice of the Supreme Court determining the right to file a certificate and reviewing the original determination of the county clerk, is appealable to the appellate division of the Supreme Court. *Matter of Emmett* (1907), 150 N. Y. 538, 44 N. E. Rep. 1102, rev'g 9 App. Div. 237; *Matter of Mitchell* (1894), 81 Hun 401, 30 N. Y. Supp. 962.

Under the provisions of section 56 of chapter 680 of the Laws of 1892, as amended in 1895 a judge of the Superior Court, of Buffalo had power to make an order requiring a county clerk to file certificates of nomination and

reversing the decision of county clerk that the certificates were not entitled to be filed. *Matter of Culdeback* (1896), 3 App. Div. 103, 32 N. Y. Supp. 188.

Upon an application to a justice of the Supreme Court to correct an alleged error of the commissioner of elections of Otsego county in rejecting and refusing to file a petition for the nomination of a candidate, the justice will not be justified, from a mere inspection of the petition, in rejecting names and reducing the number below that fixed by the statute by inferring from the similarity of the handwriting that different names were signed by the same person, but, where the same name and address appear more than once, it is to be presumed that the several signatures represent but one person and but one should be counted. *Matter of Commissioner of Elections* (1890), 64 Misc. 620, 120 N. Y. Supp. 580.

Where the same name and address appear upon two petitions naming different candidates for the same office, the signature upon the petition first filed should be recognized. *Matter of Commissioner of Elections* (1900), 64 Misc. 620, 120 N. Y. Supp. 580.

The justice may take judicial notice of the fact that a town or county designated as the residence of a signer of a petition for the nomination of a member of assembly is not included in the assembly district, or a street so designated is wholly outside its boundaries; but the court cannot take judicial notice of the fact that, where a street is partly in one part outside the assembly district, a given number on the street is outside the district. *Matter of Commissioner of Elections* (1909), 64 Misc. 620, 120 N. Y. Supp. 580.

Upon an application under this section and § 134 for an order decreeing a certificate of independent nomination insufficient to meet the requirements of § 123, the court must make such decision and order as justice may require. *Matter of Lynch* (1911), 104 Misc. 668, 178 N. Y. Supp. 20.

The provision stating that the final order of the Special Term determining the validity of an independent certificate of nomination must be made on or before the twelfth day preceding the day of election is directory and not mandatory and the court has jurisdiction of an application for a writ of mandamus to compel the board of elections to accept such certificate although the proceeding was instituted less than twelve days before election day. *Matter of Greenwald v. Boyle* (1917), 179 App. Div. 672, 167 N. Y. Supp. 151.

**Party to review.**—A county clerk has the right to institute proceedings for the review of an order commanding him to do an official act which he deems to be a violation of the statutes of the state, and the fact that he has no pecuniary interest in the act does not affect his right to appeal. *Matter of Culdeback* (1896), 3 App. Div. 103, 32 N. Y. Supp. 188.

The provision of this section allowing a review upon the complaint of "any citizen" must be understood as referring to any citizen who has instituted a proceeding by filing objections with the officer filing the certificate of nomination. *Matter of Social Democratic Party* (1905), 182 N. Y. 447, rev'g 105 App. Div. 243, 93 N. Y. Supp. 1023, which aff'd 45 Misc. 394, 91 N. Y. Supp. 941.

**Time within which order may be made.**—The provision that a final order must be made on or before the last day fixed for filing certificates for nominations to fill vacancies is directory and not mandatory, and where the court has acquired jurisdiction and the case has been submitted within the time required by the statute its order will be effectual although made after the expiration of such time. *Matter of Hennessy* (1906), 164 N. Y. 393, rev'g 54 App. Div. 180. *Matter of Herman* (1906), 108 App. Div. 535, 96 N. Y. Supp. 144.

After the time for filing certificates to fill vacancies has expired the jurisdiction of the court to entertain summary proceedings to review the determination of a commissioner of elections has terminated, and it will not entertain a proceeding to determine whether certificates are void or only defective when the time to correct defects has gone by. *Matter of Independence League Nominations* (1906), 51 Misc. 486, 100 N. Y. Supp. 760.

The expiration of the time for filing certificates of nomination to fill vacancies does not impair the jurisdiction of the appellate division on an appeal from an order reviewing the determination of the county clerk as to which of two nominees for office was the regular nominee of a

given party. *Matter of Emmett* (1896), 150 N. Y. 838, 44 N. E. 1103, rev'g 9 App. Div. 237.

The provision of the statute that the order reviewing the determination must be made on or before the last day fixed for filing certificates of nomination to fill vacancies, applies to the original order which is appealed from, and the appellate division can review this order and make a determination of the appeal after that date. *Matter of Emmett* (1896), 150 N. Y. 838, 44 N. E. 1103, rev'g 9 App. Div. 237.

The provision of the section (prior to the amendment of 1914) that an independent nomination must be made within five days of the election is merely directory, and objections to a petition for an independent nomination for the assembly filed on the day registration was completed were sufficient to establish the validity of the petition to be ascertained in sufficient. *Matter of Stoddard* (1913), 125 App. Div. 323.

Use of word "progressive" -- The use of the word "progressive" by any organization other than "the National Progressive party" though in conjunction with other names would tend to create confusion and a loss of votes through inattention on the part of some electors, and under this section the court has jurisdiction to pass upon the right to the use of said word in a certificate of nomination. *Matter of Kaufman* (1912), 78 Misc. 72.

### § 126. Supplying omitted emblems.

If a party or independent body shall have nominated candidates to be voted for by the voters of the entire state, in any year, and shall have no device or emblem selected and certified as required by this chapter, to distinguish such candidates, it shall be the duty of the secretary of state to select a device or emblem for that purpose, and such device or emblem so chosen shall be used to distinguish all candidates of that party or independent body throughout the state, whether such candidates are nominated for state or local offices; and if any certificate of nomination of candidates to be voted for by the voters of a district less than the entire state shall be filed with the secretary of state, or with any public officer pursuant to this article, by an independent body, or if nominations for such offices be made by a party, which independent body or party shall have made no nomination of candidates for offices to be filled by the voters of the entire state, and such independent certificate of nomination shall omit or the state committee of such party shall have omitted to select a device or emblem to distinguish the candidates thus nominated, it shall be the duty of the secretary of state or other public officer with whom an independent certificate of nomination for such offices is required by this chapter to be filed to select a device or emblem to represent such candidates.

Derivation: Election Law, pt. of § 74, as amended by L. 1897, ch. 555; L. 1901, ch. 654. Amended by L. 1913, ch. 820, in effect Dec. 17, 1913.

### § 127. Places of filing certain certificates of nomination.

1. Independent certificates of nomination, and certificates of party nominations made by conventions, of candidates for office to be filled by the voters of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state, except that each such certificate of nomination of a candidate

for member of assembly for the assembly district comprising the counties of Fulton and Hamilton shall be filed in the office of the board of elections of Fulton county, and a copy thereof certified by the board of elections of Fulton county shall be filed in the office of the board of elections of Hamilton county, so long as the said counties constitute one assembly district, and except that such certificates of nomination of candidates for offices to be filled only by the voters or a portion of the voters of the city of New York shall be filed with the board of elections of the city of New York. Such certificates of nomination of candidates for offices to be filled only by the votes of voters, part of whom are of New York city and part of whom are of a county not wholly within the city of New York, shall be filed with the board of elections of such county and in the office of the board of elections of said city. Independent certificates of nomination of candidates for offices of any other city, to be elected at the same time at which a general election is held shall be filed with the board of elections of the county in which such city is located.

2. Independent certificates of nomination of candidates for offices of a city, village or town to be elected at a different time from a general election shall be filed with the clerk of such city, village or town, respectively. In towns in which town meetings are held at the time of general elections, independent certificates of nomination of candidates for town offices shall be in duplicate, one of which shall be filed with the town clerk of the town in which such officers are to be voted for, and the other with the board of elections of the county in which such town is located.

3. All independent or party certificates of nomination, the filing of which is not otherwise provided for in this chapter, shall be filed with the board of elections of the county in which, or in a portion of which, the candidates so nominated are to be voted for.

4. All such filed certificates and corrected certificates of nomination, all objections to such certificates and all declinations of nomination are hereby declared to be public records; and it shall be the duty of every officer or board to exhibit without delay every such paper to any person who shall request to see the same. It shall also be the duty of each such officer or board to keep a book which shall be open to public inspection, in which shall be correctly recorded the names of all candidates nominated by certificates filed in the office of such officer or board or certified thereto, the title of the office for which any such nomination is made, the political or other name and emblem of the party or independent body making such nomination, and in which shall also be stated all declinations of such nominations, or objections to such nominations, and the time of filing each of the said papers.

Derivation: Election Law, § 58, as amended by L. 1897, ch. 379, § 11; L. 1898, ch. 363, § 2; L. 1900, ch. 361, § 3; L. 1901, ch. 95, § 12; L. 1902, ch. 241, § 1; L. 1902, ch. 405, § 3; L. 1905, ch. 643, § 10.

Amended by L. 1911, ch. 891; L. 1913, ch. 820; L. 1921, ch. 479, in effect May 2, 1921.

Although the minutes and records of a nominating convention have been filed as required by section 10 of the Primary Election Law (now Election Law, § 67), and show that a person has been nominated, such filing of the minutes is not equivalent to the filing of the certificate required by this section. *Matter of Darling* (1907), 121 App. Div. 656, 108 N. Y. Supp. 430, aff'd 149 N. Y. 570.

As to filing of certificates of nomination, see Report of Atty.-Gen. (1906), 633.

In twenty-third senatorial district, embracing Richmond and Rockland counties, one wholly within and the other wholly without New York city, certificates of senatorial nominations should be filed only with secretary of state. *People ex rel. Donegan v. Dooling* (1910), 141 App. Div. 31.

### § 128. Times of filing independent certificates and certain other certificates of nomination.

The time or times for filing the following certificates of nomination shall be as follows:

1. Certificates of party nominations made by a state or judicial district convention shall be filed not later than the sixth Tuesday preceding the general election.

2. Independent certificates of nomination, except those for the nomination of candidates for city offices to be filled by an election held at a different time from a general election, and except those for the nomination of candidates for village or town offices, shall be filed not earlier than the sixth Tuesday and not later than the fifth Tuesday before the day of the general election. Independent certificates of nomination of candidates for offices to be filled at a town meeting held at the time of the general election shall be filed not earlier than the fifth Tuesday and not later than the third Tuesday before the day of election.

3. Independent certificates of nomination of candidates for city, town or village offices to be elected at a different time from a general election shall be filed at least fifteen and not more than thirty days before the day of election.

4. In case of a special election ordered by the governor under the provisions of section two hundred and ninety-two of this chapter, independent certificates of nomination for the office or offices to be filled at such special election shall be filed with the proper officers or boards not less than ten days before such special election.

Derivation: Election Law, § 69, as amended by L. 1897, ch. 379, § 12; L. 1898, ch. 343, § 9; L. 1900, ch. 381, § 3; L. 1901, ch. 95, § 13; L. 1902, ch. 405, § 3; L. 1905, ch. 643, § 11.

Amended by L. 1911, ch. 891; L. 1913, ch. 820; L. 1918, ch. 298; L. 1920, ch. 878; L. 1921, ch. 479, in effect May 2, 1921.

The statutory provision in respect to the time when the certificates of nomination must be filed is mandatory and must be complied with, and after the time has passed a county clerk has no right to receive and file certificates of nominations. *Matter of Cuddeback* (1896), 3 App. Div. 103, 39 N. Y. Supp. 348. *Matter of Halpin* (1906), 168 App. Div. 271, 95 N. Y. Supp. 611. *Matter of McKeon* (1898), 25 Misc. 80, 54 N. Y. Supp. 680.

The board of elections of the city of New York has power to act on



certificates of independent nominations filed less than twenty days prior to the election. *Matter of Herman* (1895), 108 App. Div. 345, 96 N. Y. Supp. 144.

Secretary of state is not bound to receive a certificate of nomination after the date fixed by law for filing it. *Report of Atty.-Gen.* (1895), 289.

An official ballot is not invalid because it contains the name of a candidate whose certificate of nomination was not filed until after the fixed date. *Report of Atty.-Gen.* (1895), 293.

When the last day for filing the certificate falls on Sunday it must be filed on the day preceding. *Report of Atty.-Gen.* (1902), 318.

Where a certificate is mailed to secretary of state so that in ordinary course of mail it would reach him in time, but does not, for unaccountable reasons, the court may relieve from default. *Matter of Bayne* (1910), 69 Misc. 579.

Strict construction of the section as to party nominations filed with secretary of state, read in light of section 20 of General Construction Law, requires party nominations to be filed on the Saturday before rather than the Monday following the thirty-day period. *Matter of Bayne* (1910), 69 Misc. 579.

**Ed. Note.**—The thirtieth day before election always falls on Sunday and this confusion should be prevented by a statutory change.

Where, under strict statutory construction, Saturday, October 8th, was the last day to file party certificates of nomination with secretary of state, but such secretary had compiled and published in his political calendar that Monday, October 10th, was the last day in accordance with the practical construction which had been theretofore followed, a certificate filed on that day should be held filed in time. *Matter of Bayne* (1910), 69 Misc. 579.

**Filing of certificate with county clerk after business hours.**—A candidate is entitled to file his certificate of nomination at any hour of the day before midnight on the last day for filing such a certificate, by delivery thereof to the county clerk, and is not required to file the same within the hours provided by statute for keeping the clerk's office open for the transaction of public business. *Matter of Norton* (1898), 34 App. Div. 79, rev'g 33 N. Y. Supp. 924; appeal dismissed 138 N. Y. 130.

Certificate filed with county clerk at any time on the last day is legal. *Report of Atty.-Gen.* (1895), 295.

The abstract question of the regularity of filing a certificate of nomination with the county clerk after his office has been closed for the day on the last day of the period allowed by the Election Law, is not of such general interest or importance as to call for a departure from the general practice of the Court of Appeals not to decide abstract questions. *Matter of Norton* (1899), 138 N. Y. 130.

**Power to order certificate filed nunc pro tunc.**—A certificate of independent nomination, as presented for filing one week after the last day prescribed by law, held could not be ordered filed nunc pro tunc. *Matter of McDonald* (1898), 25 Misc. 80, 54 N. Y. Supp. 690.

**When court may give relief.**—The statutory requirement as to the time when certificates of nomination should be filed is mandatory, yet there may occur accidents and mistakes, causing delay in such filing, and from the effects of which the Supreme Court may give relief provided it finds that the delay was not due to the negligence of the convention making the nomination, but to the party to whom the filing of the certificate was intrusted; but the court in each case, as to whether there has been excusable default or mistake.



depend upon the particular facts, and the determination of the question rests in the Supreme Court. *Matter of Darling* (1907), 189 N. Y. 570, aff'g 121 App. Div. 656, 106 N. Y. Supp. 430.

Where a certificate of nomination of town officers, intended to be filed in the county clerk's office, is delivered by the chairman of the town convention, in good faith, to the town clerk on the latter's demand and statement that it is his duty to file it with the county clerk, and the town clerk retains it twenty-four hours and mails it to the county clerk so late on the last day for filing that it does not reach the county clerk's office until the next day, and the circumstances indicate, on the part of the town clerk, fraud or a design that the certificate should not be filed in time, an order should be made requiring the county clerk to print the names of the candidates upon the official ballot. *People ex rel. Simmons v. Ham* (1907), 56 Misc. 112, 106 N. Y. Supp. 312.

Writ of mandamus denied where former nomination valid. *People ex rel. McGrath v. Dooling* (1910), 141 App. Div. 29.

Mandamus will not issue to compel the acceptance and filing of certificates of nomination, if they are not tendered for filing twenty days before the election, as required by this section. *People ex rel. Steinert v. Britt* (1911), 146 App. Div. 684, 131 N. Y. Supp. 455.

Where the last day on which certificates of nomination may be filed, as provided in section 128 of the Election Law, occurs on Sunday, such certificates must be filed on the Saturday before. *Report of Atty.-Gen.* (1911), Vol. 2, p. 647.

Mandamus will lie to require the filing of a proper certificate, even though the time specified within which a certificate may be presented has not yet arrived, if it may justly be inferred that defendants will refuse to file any certificate, except one which shall comply with the requirements of the statute. *People ex rel. Hotchkiss v. Smith* (1912), 152 App. Div. 514.

### § 129. Certification of nominations by secretary of state.

The secretary of state shall, twenty-one days before the election, or nine days before a special election, certify to the board of elections of each county, and to the board of elections of the city of New York, the name, residence and place of business, if any, of each candidate either nominated in any certificate so filed with him, or to whom he has issued a certificate, for whom the voters of any such county or said city, respectively, may vote, the title of the office for which he is nominated, the party or other political name specified in such certificate, and the emblem or device chosen to represent and distinguish the candidates of the political party or independent body making such nominations.

**Derivation:** Election Law, § 60, as amended by L. 1897, ch. 379, § 13; L. 1901, ch. 95, § 14; L. 1905, ch. 643, § 12.

**Amended by** L. 1911, ch. 891; L. 1919, ch. 630, in effect May 14, 1919.

**Certificate binding on local authorities.**—The certificate of the secretary of state as to the names of candidates of state offices, emblems of parties and order of position on the ballot is binding on the local election authorities, and the ballot should be printed accordingly. *Ferubacher v. Roosevelt*, 14 Misc. 199, 35 N. Y. Supp. 898 (1895), aff'd 90 Hun 441.

**§ 130. Publication of nominations.**

At least six days before an election to fill any public office the board of elections of each county, except those counties which are wholly within the city of New York, shall cause to be published in not less than two nor more than four newspapers within such county, one of which shall be a daily newspaper, if a daily newspaper is published in such county, and in any county having one hundred thousand or more inhabitants, adjoining a city having a population of one million or more, in not less than six nor more than ten newspapers, a list of all nominations of candidates for offices other than town offices to be filled at such election, certified to such board by the secretary of state, or filed with such board or certified by such board. The board of elections of the city of New York shall, within the same time before an election to fill any public office, cause to be published in two newspapers published in each borough within such city a list of the nominations of candidates for office to be voted for at such election in such boroughs respectively, which were certified to such board by the secretary of state, or filed in the office of such board, or certified by such board and in the borough of Brooklyn the board of elections shall cause such publication to be made in the newspapers designated as corporation newspapers of said borough and in one daily newspaper published in the Jewish language.

Such publication shall contain the name and residence, and if a city, the street number of the residence and place of business, if any, and the party or other designation of each candidate, and a fac simile of the emblems or devices selected and designated as prescribed by this article, to represent and distinguish the candidates of the several political parties or independent bodies. The city clerk of each city except New York, and the board of elections of the city of New York, shall at least six days before an election of city officers thereof, held at a different time from a general election, cause like publications to be made as to candidates for offices to be filled at such city election in a like number of newspapers published in such city.

One of such publications shall be made in a newspaper which advocates the principles of the political party that at the last preceding election for governor cast the largest number of votes in the state for such office; and another of such publications shall be made in a newspaper which advocates the principles of the political party that at the last preceding election for governor cast the next largest number of votes in the state for such office. The officer or board, in selecting the papers for such publications, shall select those which, according to the best information he can obtain, have a large circulation within such county or city. In making additional pub-

lications, the officer or board shall keep in view the object of giving information, so far as possible, to the voters of all political parties. The officer or board shall make such publication twice in each newspaper so selected in a county or city in which daily newspapers are published; but if there be no daily newspaper published within the county, one publication only shall be made in each of such newspapers. Should the board of elections or other officer find it impracticable to make the publication six days before election day in counties where no daily newspaper is printed, he shall make the same at the earliest possible day thereafter, and before the election.

*Derivation:* Election Law, § 61, as amended by L. 1897, ch. 379, § 14, and ch. 608, § 1, L. 1901, ch. 95, § 15, L. 1904, ch. 74, § 1; L. 1905 ch. 643, § 13.

*Amended by* L. 1911, ch. 491, § 62, and L. 1915, ch. 673, in effect May 22, 1915.

*Forms.*—As to list of nominations to be published by county clerk, see Forms (part 12, *post*).

The designation of newspapers to publish lists of nominations is reviewable by writ of certiorari, and such proceeding may be instituted by the proprietor of a newspaper which has not been designated. The person or persons making such designation cannot act arbitrarily but must show good faith in carefully considering all evidence presented as to circulation. *People ex rel Press Publishing Co. v. Martin* (1894), 142 N. Y. 226, 40 Am. St. Rep. 592, aff'g 72 Hun. 354.

*Expense of publication.*—The rate of compensation fixed by section 2217 of the Code of Civil Procedure for the publication of certain legal advertisements does not govern compensation for the publication of notices under the Election Law relative to the places of registration and election in election districts and the boundaries of said districts. *Mack v. City of Buffalo* (1900), 32 Misc. 330, 66 N. Y. Supp. 679.

### § 131. Lists for town clerks and aldermen.

The board of elections of each county, except those counties which are wholly within the city of New York, shall at least six days before election day send to the town clerk of each town, and to an alderman of each ward in any city in the county, at least five and not more than ten printed lists for each election district in such town or ward, containing the name and residence, and if in a city the street number of residence, and place of business, if any, of all candidates whose certificates of nomination have been filed with or issued by it or been certified to it, and the party or other designation, and also a fac simile of the emblem or device of each political party or independent body nominating candidates to be voted for by the voters of the respective towns and wards. Such lists shall at least three days before the day of election be conspicuously posted by such town clerk or alderman in one or more public places in each election district of such town or ward, one of which lists shall be so posted at each polling place.

**Derivation:** Election Law, § 63, as amended by L. 1897, ch. 379, § 15; L. 1905, ch. 643, § 14.

**Amended by** L. 1911, ch. 891, § 62, in effect Nov. 15, 1911.

**Consolidators' note.**—The last clause of the section, "one of which shall be at each polling place," made to read "one of which lists shall be so posted at each polling place," which is the intent, but not clearly expressed.

**Forms.**—As to printed list to be sent by board of elections clerk to each town clerk or alderman in county or city, see Forms (part 12, post).

### § 132. Posting town and village nominations.

Each town and village clerk shall cause at least ten copies of a like list of all nominations to office filed with him for an election to be held at a time other than the day of the general election, to be conspicuously posted in ten public places in the town or village, at least one day before the town meeting or village election, one of which copies shall be so posted at each polling place of such town meeting or village election.

**Derivation:** Election Law, § 63, as amended by L. 1905, ch. 643, § 15.

**Forms.**—As to list of nominations to be posted by town or village clerk, see Forms (part 12, post).

### § 133. Declination of nomination.

1. The name of a person nominated for an office, otherwise than by an official primary election, shall not be printed on the official ballot if, within the time hereinafter provided, he notifies the board or officer with whom the original certificate of his nomination is filed, in a writing signed by him and duly acknowledged, that he declines the nomination, or if nominated by more than one political party or independent body, the name of a person so nominated shall not be printed on the ticket of a party or independent body whose nomination he shall in like manner decline.

2. If the declination be of a nomination for an office to be filled at a general election, including a city election held at the time of a general election, but not including a town meeting held at the time of such an election, such notification shall be given at least twenty-nine days before the general election, except that if the declination be of a party nomination made by a state or judicial district convention such notification shall be given not later than the Friday following the sixth Tuesday before the general election.

3. If the declination be of a party nomination for an office to be filled at a town meeting held at the time of a general election, such notification shall be given not later than four days after the fourth Tuesday before the general election.

4. If the declination be of an independent nomination for an office to be filled at a town meeting held at the time of a general election, such notification shall be given not later than four days after the third Tuesday before the general election.

5. If the declination be of a party nomination for a city, town or village office to be filled at a city or village election or town meeting held at a different time from the general election, such notification shall be given at least fifteen days before the election.

6. If the declination be of an independent nomination for a city, town or village office to be filled at a city or village election or town meeting held

at a different time from the general election, such notification shall be filed at least twelve days before the election.

7. If a declination of nomination to a town office, in towns where town meetings are held at the time of general elections, be filed in the office of the board of elections, such board shall forthwith notify the town clerk in writing of such declination.

8. When a person who was not designated for nomination at an official primary election receives a nomination for public office at such primary, it shall be the duty of the board or officer with whom designations for nomination to such office are required by this chapter to be filed to forthwith notify, by mail, such person of his nomination. A person nominated as aforesaid, without designation, at an official primary, may decline such nomination not later than the seventh day after the day of the primary at which he was nominated, by filing his written declination thereof, signed by him and duly acknowledged, with the board or officer with whom designations for nomination to such office are required by this chapter to be filed.

9. The board or officer to whom such notification is given shall forthwith inform by mail or otherwise the committee authorized to fill the vacancy that the nomination has been declined, and if such declination be filed with the secretary of state, such officer shall also give immediate notice by mail or otherwise that such nomination has been declined, to the several boards of elections or other officers authorized by law to prepare official ballots for election districts affected by such declination.

Derivation: Election Law, § 64, as amended by L. 1897, ch. 379, § 16; L. 1901, ch. 95, § 16, L. 1902, ch. 465, § 4; L. 1906, ch. 643, § 16.

Amended by L. 1911, ch. 891; L. 1913, ch. 820; L. 1918, ch. 298; L. 1920, ch. 878; L. 1921, ch. 479, in effect May 2, 1921.

Forms.—As to declination of nomination, see Forms (part 12, post).

Declination of nomination.—As to when a nomination of another candidate, where the nominee of a convention declines the nomination, cannot be regarded as filling a vacancy, see Matter of Halpin (1905), 108 App. Div. 271, 95 N. Y. Supp. 611.

### § 134. Objections to certificates of nomination.

A written objection to any certificate of nomination may be filed with the officer with whom the original certificate of nomination is filed within three days after the filing of such certificate, excepting that if by any independent certificate of nomination any person is nominated who is at the time or shall be after the filing of such independent certificate of nomination, the candidate of a political party for the same office and the party certificate has been filed after the filing of the independent certificate of nomination, the written objections to an independent certificate of nomination filed be filed within three days after the filing of such party certificate; and if written objections to such independent certificate of nomination have been already filed by the same or some other person and shall have been heard and determined or heard and not determined, there shall be a new hearing upon all the objections so filed, the written objections to an independent certificate of nomination filed after the filing of a party certificate as herein provided may contain all objections to such independent certificate notwithstanding the same or some other person has already filed objections to such certificate. If such objection be filed, notice thereof shall be given forthwith by mail to the committee, if any, appointed on the face of such certificate for the purposes specified in section one hundred

and thirty-five of this article, and also to each candidate placed in nomination by such certificate. The question raised by such written objection shall be heard and determined as prescribed in section one hundred and twenty-five of this article.

**Derivation:** Election Law, § 65.

**Amended by L. 1911, ch. 649.** In effect July 13, 1911.

**Cross-references.**—As to hearings of objections by filing officers and review of their determinations, see Election Law, § 125.

The validity of the objections to a certificate of nomination is primarily heard, investigated and decided by the officer with whom such certificate is filed, and unless an order be made by a court of competent jurisdiction his decision is final. *Matter of Woodworth* (1892), 64 Hun, 522, 19 N. Y. Supp. 525.

Where no objection to a certificate of nomination is filed within the time prescribed, the officer with whom the certificate is filed is bound to recognize it as valid and the persons named therein as the regular nominees. *Matter of Cowie* (1890), 33 N. Y. St. Rep. 710, 11 N. Y. Supp. 338.

**Proper party to review.**—When objections to a certificate of nomination are sustained by the board of elections a review may be had only on the application of the candidate, or of the committee representing the party which placed him in nomination. *Matter of Logan* (1906), 116 App. Div. 146, 102 N. Y. Supp. 200.

Any party interested may apply to the court to investigate and decide between the contending candidates, but a member of a county committee, not one of the candidates nominated, is not an interested person. *Matter of Woodworth* (1892), 64 Hun, 522, 19 N. Y. Supp. 525.

A person who is not one of the candidates in a certificate of nomination, but who is substituted as a party in place of the county clerk in a proceeding to review the determination of the clerk on the filing of a certificate of nomination, cannot appeal from an order of a justice of the Supreme Court ordering the county clerk to print on the official ballot the names of certain nominees. *Matter of Woodworth* (1892), 64 Hun, 522, 19 N. Y. Supp. 525.

On a review of a determination of the board of elections of the city of New York sustaining objections to a certificate of nomination and rejecting such certificate, the Supreme Court can consider only the facts presented to such board of elections. *Matter of Horan* (1905), 108 App. Div. 269, 95 N. Y. Supp. 607.

**Judicial review prior to action of board.**—Although no certificate for an independent nomination has been presented to the board of elections for filing, the courts will entertain a mandamus proceeding in an extraordinary case directing such board to disregard as unconstitutional the provision of a statute held to be void. *People ex rel. Hotchkiss v. Smith* (1912), 200 N. Y. 231.

**Duty of court.**—Upon an application under §§ 125 and 134 for an order decreeing a certificate of independent nomination insufficient to meet the requirements of § 124, the court must make a decision and order as justice may require. *Matter of Lynch* (1919), 108 Misc. 868, 175 N. Y. Supp. 30.

### § 135. Filling vacancies in nominations.

Except as otherwise provided in section fifty, if a nomination is duly declined, or in any case if an attempt to nominate at an official primary or at an unofficial primary held pursuant to section forty-five results in a tie or a candidate regularly nominated dies



before election day, or is found to be disqualified to hold office for which he is nominated, or if any certificate of nomination is found to be defective but not wholly void, the committee appointed on the face of such certificate of nomination or otherwise authorized by this chapter to fill the vacancy may make a new nomination to fill the vacancy so created, or may supply such defect, as the case may be, by making and filing with the proper officer a certificate setting forth the cause of the vacancy or the nature of the defect, the name of the new candidate, the title of the office for which he is nominated, the name of the original candidate, the name of the political party or other nominating body which was inscribed on the original certificate, and such further information as is required to be given by an original certificate of nomination; except that where a certificate is filed pursuant to this section to fill a vacancy, it shall not be lawful to select a new name or emblem, but the name and emblem chosen to distinguish the candidate nominated by the original certificate shall be used to distinguish the candidate nominated as provided by this section.

**Derivation:** Election Law, § 66, pt. of subd. 1, as amended by L. 1897, ch. 475, c. 17; L. 1901, ch. 95, § 17; L. 1905, ch. 49, § 1, and ch. 643, § 17.

**Amended by** L. 1911, ch. 891; L. 1913, ch. 820; L. 1921, ch. 479, in effect May 2, 1921.

**Consolidators' note.**—The words "or the attempt to nominate at a primary results in a tie" were inserted in this section by L. 1905, ch. 49, but the draftsman of chapter 643 of the same year (which amended this and a number of other sections to harmonize the machinery of the Election Law with the new office of commissioner of elections of Erie county created by L. 1904, ch. 394) omitted them presumably in ignorance of the pendency of the earlier amendment, and both bills passed the legislature without being harmonized. The result is that the original omission to cover the case of a tie vote, once cured, has been recreated.

**Form.**—As to filling vacancies in nominations by duly authorized committees, see Forms (part 12, post).

**Nominations where regular nominee declines.**—Prohibition against the nomination of a person already the nominee of an independent body of voters. Matter of Hulpin (1905), 108 App. Div. 271, 95 N. Y. Supp. 611.

**Vacancy to be filled by committee.**—The vacancy caused by the refusal of a nominee, after the certificate of nomination is filed and the convention which named him has adjourned, can only be filled by the committee appointed for that purpose. Matter of Greene (1907), 121 App. Div. 693, 106 N. Y. Supp. 425.

Where a vacancy was left by a convention of the Prohibition party which was subsequently filled by the duly authorized committee of such party by nominating for office the candidate nominated by the Democratic party, the secretary of state cannot refuse to file, as invalid, a certificate of such nomination. Matter of Gillespie v. McDonough (1902), 39 Misc. 147, 79 N. Y. Supp. 182.

**Contra.**—Committee cannot make an original nomination for an office

with reference to which the convention failed to take any action. Reports of Atty-Gen. (1901, 292, 1902, 307).

**Power of committee.**—Although this section allows the committee appointed by a political convention to supply vacancies in a certificate of nomination, fill vacancies, etc., such committee has no power when a certificate of nomination has not been filed within the time required by statute. *Matter of Du Ling* (1907, 121 App. Div. 636, 106 N. Y. Supp. 430, *aff'd* 189 N. Y. 370).

Where assembly certificates when originally filed did not contain the name of the office as required by the Election Law, they were defective only and not wholly void; and the committee appointed on their face to supply defects, etc., should supply such defect. *Matter of Independence League Nominations* (1906, 51 Misc. 486, 100 N. Y. Supp. 760).

The Election Law provides that when there have been original party nominations the nominations are completed on the filing of the certificate, and when a nomination has been declined the vacancy must be filled by a candidate selected by the nominators. But as such committee having the right to fill vacancies is prohibited from selecting any person who has been nominated as a candidate by any other political party, it follows that the candidate who is nominated by another party cannot be placed under the name and emblem by filing the certificate of nomination by independent voters. What cannot be done directly by the committee cannot be done indirectly by the certificate of nomination. *Matter of Brexillier* (1906, 110 App. Div. 141, 102 N. Y. Supp. 217).

Where a party nominee has duly declined the nomination and filed a certificate to the effect with the board of elections as required by statute, two of a committee of three appointed by the convention pursuant to this section are entitled to nominate a person in his place by filing a new certificate. *Matter of Kirk v. Gallagher* (1911, 146 App. Div. 683).

### § 136. Certificates of new nominations.

The certificate so made shall be subscribed and acknowledged by a majority of the members of the committee, or by such number as are authorized by this chapter to fill a vacancy, and the members of the committee subscribing the same shall make oath before the officer or officers before whom they shall severally acknowledge the execution of the said certificate that the matters therein stated are true to the best of their information and belief. Except in a case provided for in section one hundred and thirty-seven, the said certificate, or a certificate of nomination to fill a vacancy by the committee provided for in section ninety, shall be filed in the office in which the original certificate was filed, or in the office provided for in section ninety, as the case may be, as follows: if for a nomination for a city office to be filled at a city election held at a time different from the general election, or for a nomination for a village office or for a town office to be filled at a town meeting held at a time different from the general election, at least eight days before the election; if for an independent nomination for an office to be filled at a town meeting held at the time of a general election, not later than the second Tuesday before the election; if for a party nomination for an office to be filled at a town meeting held at the time of a general election, not later than the third Tuesday before the election; if for a party nomination to fill a vacancy in a nomination made by a state or judicial district convention, not later than the fifth Tuesday before the election; in any other case, not

later than twenty-five days before the election. Upon being so filed such certificate shall have the same force and effect as an original certificate of nomination. When a new certificate of nomination is filed with the secretary of state, he shall, in certifying the nomination to the various boards and officers, insert the name of the person who has been thus nominated, instead of that of the candidate nominated originally, or, if he has already sent forward his certificate, he shall forthwith certify to such board and other officers the name of the person newly nominated, and such other facts as are required to be stated in such certificate.

*Derivation:* Election Law, § 66 pt. of subd. 1, as amended by L. 1897, ch. 17, § 17; L. 1901, ch. 95, § 17; L. 1905, ch. 49, § 1, and ch. 643, § 15.

*Amended by* L. 1911, ch. 891; L. 1913, ch. 820; L. 1918, ch. 298; L. 1920, ch. 878; L. 1921, ch. 479, in effect May 2, 1921.

A nomination for public office becomes complete only upon filing the certificate of nomination with the proper officers, and then, and not before, does the person nominated become the candidate of a party for that office. *Matter of O'Brien* (1910), 140 App. Div. 467, 125 N. Y. Supp. 380.

### § 137. Death of candidate after printing of ballots, official pasters.

In case of the death of a candidate before election day, the vacancy may be filled by filing the proper certificate of nomination of a candidate to fill such vacancy, with the officer or board with whom the original certificate was filed, or by whom it was issued, and if filed with the secretary of state, the secretary of state shall immediately give the necessary notifications. If such certificate be filed or such notification from the secretary of state be received after the official ballots have been printed, it shall be the duty of the officer or board furnishing the official ballots to prepare and furnish to the inspectors of election in the election districts affected adhesive pasters containing the name of the candidate nominated to fill the vacancy. The pasters shall be of plain white paper, printed in plain black ink and in the same kind of type as that used in printing the names of the candidates upon the official ballots, and shall be of a size as large as and no larger than the space occupied upon the official ballot by the name of the candidate in whose place the candidate named upon the paster has been nominated. If, however, the deceased shall be the candidate of several parties or bodies, and they shall not all nominate the same candidate as his successor, a paster shall be prepared which shall contain the entire matter to be contained in the section on which such deceased candidate's name appears, and shall be pasted over the whole section and shall supersede it.

Whenever such pasters are provided, the officer or board furnishing them shall certify to the inspectors of election in the election district affected by the vacancy, the name of the original candidate, the name of the new nominee, the title of the office for which the

nomination is made, and the name of the political party or independent body making the nomination, and shall state the number of pasters furnished which number shall be equal to the number of official ballots furnished for such district. Upon the delivery of said pasters, the inspectors of election shall sign a receipt for the same, which receipt shall be retained by the officer or board furnishing the pasters, and shall be part of the record of his or their office. The inspectors shall deliver the pasters to the ballot clerks, who are required to affix one of such pasters in the proper place and in a proper manner upon each official ballot before said ballot shall be delivered to a voter. When so affixed to the official ballot, the pasters shall be part of the official ballot. The ballot clerks shall include in their statement of ballots a statement showing the number of pasters received by them, the number of pasters affixed to official ballots and the number of unused pasters returned by them, the unused pasters to be inclosed in the package of ballots not delivered to voters.

The use of any paster upon the official ballot otherwise than as herein provided is hereby declared a felony, punishable by imprisonment in a state prison for not less than one nor more than five years.

Derivation: Election Law, § 66, subd. 2.

Amended by L. 1911, ch. 891; L. 1913, ch. 821; L. 1921, ch. 479, in effect May 2, 1921.

## ARTICLE 6

## REGISTRATION OF VOTERS.

## Section 150. Meetings for registration.

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## § 150. Meetings for registration.

1. Except as otherwise herein provided, before every general election, the board of inspectors for each election district in every city, and in villages having five thousand inhabitants or more shall hold four meetings for the registration of the electors thereof, at the place designated therefor, to be known respectively as the first, second, third and fourth meetings for registration. The said meetings shall be held on the fourth Friday, fourth Saturday and the third Friday and third Saturday before such election. Each meeting shall begin at seven o'clock in the forenoon, and continue until ten o'clock in the evening. In all election districts other than in cities or villages having five thousand inhabitants or more the board of inspectors of election for each such election district shall hold two meetings for the registration of voters thereof, at the places designated therefor, before each general election, namely, on the fourth and third Saturdays before the election, to be known respectively as the first and second meetings for registration, which meetings shall begin at seven o'clock in the forenoon and continue until ten o'clock in the evening.

2. In a city having more than one million inhabitants, the board of inspectors for each election district shall hold six meetings for the registration of the electors thereof before each general election. Such meetings shall begin on Monday the twenty-ninth day before such election and continue on each day of the same week up to and including Saturday. On each day except Saturday the meeting shall begin at five o'clock in the evening, and on Saturday at seven o'clock in the morning. All such meetings shall continue until half-past ten o'clock in the evening.

**Derivation:** Election Law, pt. of § 30, as amended by L. 1898, ch. 335, § 4, L. 1901, ch. 300, § 1; L. 1905, ch. 675, § 2.

**Amended by** L. 1911, ch. 649; L. 1913, ch. 800; L. 1915, ch. 678; L. 1918, ch. 323, in effect Apr. 24, 1918.

**Consolidators' note.**—The registration of voters was provided for by statute earlier than their enrollment in parties under L. 1898, ch. 179, and we accordingly find the words "enrollment" and "enrolled" occasionally used in the sense of "registration" and "registered." In view of their subsequent use in the different sense, "enrollment" and the like have been changed throughout this article to "registration" and the like.

**Cross-References.**—Requirement of registration to be completed at least ten days before each election. Constitution, art. 2, § 4 (part 2, *post*). Registration for town or village elections. Constitution, art. 2, § 4, and Election Law, § 161. Registration days not holidays. Election Law, § 166. Misconduct of registry officers. Penal Law, § 753 (part 5, *post*).

**Constitutionality of registration laws.** See *People ex rel. Stapleton v. Bell*, (1890) 119 N. Y. 175.

**Hours of closing.**—The statutory provision as to closing the meetings for registration at a certain hour refers to the closing of the place of registration, and inspectors should not refuse to register those who are present within the place of registration at the time of closing. *People ex rel. Cass v. Hosmer*, (1885) 2 How. Pr. (N. S.) 472. See also Report of Atty.-Gen., (1904) 448.

**Inspectors may adjourn the meeting during designated hours.** Report of Atty.-Gen., (1902) 322

## § 151. Additional meetings for registration.

If a special election be called by the governor or a special or other election be appointed by or pursuant to law for a time other than the day of general election, the inspectors of election of the various election districts in the political subdivision for which such special or other election is to be held shall meet in their respective districts on the second Saturday preceding such election, from eight o'clock in the forenoon to ten o'clock in the evening, for the purpose of revising and correcting the register of voters as provided in this article. This section shall not apply to cities of one million inhabitants or over.

Former § 151 repealed by L. 1911, ch. 649. See Election Law, § 153. New § 151 added by L. 1916, ch. 537; amended by L. 1920, ch. 876, in effect May 21, 1920.

### § 151-a. Meetings for registration for special elections in the year nineteen hundred and eighteen.

**Added by** L. 1918, ch. 7, in effect Feb. 19, 1918. See part 1A, Special Provisions of Election Law for Year 1918, *post* p. 288-c.

## § 152. Conduct of meetings; watchers.

No inspector shall on any day for registration be absent during the hours fixed for registering the names of electors. Each political party or independent body duly filing or entitled to file certificates of nominations of candidates for offices to be filled at any



such election may, by a writing signed by the duly authorized county, city, town or village committee of such political party or independent body, or by the chairman or secretary thereof charged with that duty, and delivered to and filed with one of the inspectors of election, appoint not more than two watchers to attend any meeting or meetings of inspectors for an election district held for the registration of electors thereof. Each watcher must be a qualified elector of the city or county in which the election district for which he or she is appointed a watcher shall be located. Such watchers may be present at such place of registration and within the guard-rail, from at least fifteen minutes before the commencement of the said meeting until after the completion of the duties of the board of inspectors for that day of registration.

*Derivation:* Election Law, pt. of § 30, as amended by L. 1898, ch. 335, § 4; L. 1901, ch. 300, § 1; L. 1905, ch. 675, § 2.

*Amended by* L. 1910, ch. 429; L. 1911, ch. 649, and L. 1914, ch. 242; L. 1918, ch. 323, in effect Apr. 24, 1918.

**Boards to act ministerially.** — The boards of registration of the several election districts of the State act only ministerially in receiving and registering the names of voters. *Matter of Hamilton* (1894), 80 Hun 511, 30 N. Y. Supp. 499.

### § 153. Adding and erasing names on register.

If the board of inspectors at any meeting for the registration of electors shall have neglected or refused to place upon the register of electors the name of any person who is entitled to have his name placed thereon, application may be made to the supreme court, or any justice thereof in the judicial district in which such election district is located, or of a county adjoining such judicial district, or to a county judge of the county in which such election district is located, for an order to place such name upon the register of electors; and such court, justice or judge may, upon sufficient evidence, and upon such notice of such application, of not less than twenty-four hours, to the board of inspectors and

such other persons interested, as the court, justice or judge may require, order such inspectors to convene as a board of registration on the second Saturday before such election, and to add the name of such person to such register of electors, and such register shall be corrected accordingly; but no court, justice or judge shall order the name of any person to be added to the register of electors unless it shall have been omitted therefrom through the fault, error or negligence of the election officers. In case the name of any person who will not be qualified to vote in such election district, at the election for which such registration is made, shall appear upon such register, application may be made in like manner by any elector of the town or city in which such election district is located, or by the state superintendent of elections or any deputy state superintendent of elections to any court, justice or judge hereinbefore designated, for an order striking such name from the register, and such court, justice or judge may, upon sufficient evidence, and upon such notice of such application, of not less than twenty-four hours, to the person interested as the court, justice or judge may require, served either personally or by depositing the same in the post-office addressed to said person by his name, and at the address which appears in the register certified by the inspectors of election order such board to strike such name from such register of voters, and such register shall be corrected accordingly. In all applications to strike the names of voters from the register under this section an affidavit by the state superintendent of elections or any of his deputies when duly deputed by the state superintendent of elections for that purpose, that investigation was made by him pursuant to the provisions of section four hundred and seventy-five of this chapter, and that the affiant did visit and inspect the premises claimed by the voter as his residence, and did interrogate an inmate, householder, keeper, caretaker, owner, proprietor or landlord thereof or therein as to the said voter's residence therein or thereat, and that the said affiant was informed by one or more of said persons, naming them, that they were acquainted with and knew the persons residing therein or thereat, and that the voter did not reside at said premises thirty days be-

fore election, shall be presumptive evidence against the right of the voter to register from such premises, and in case the court, justice or judge direct that service of the order to show cause may be made by depositing the same in the post-office, such service shall not be complete until a copy of the order to show cause shall also have been served upon the custodian of primary records for the political subdivision in which such election district is located, and upon the chairman of each political committee for the political subdivision in which such election district is located. If upon the hearing of such application the court, justice or judge shall decide that the name of the elector shall be stricken from the register, the order of the court, justice or judge shall direct that the board of elections shall cause such name to be stricken from the register and also from the books of enrollment if it appears therein. In case the elector has, through no fault or neglect of his own, been registered in a wrong election district, the board of elections, upon proper proof, and upon such notice to the chairmen of the county committees of the several parties as the board shall prescribe, may direct that his name be stricken from the register of the district in which he is not a qualified elector and, if he is a qualified elector in an adjoining election district within the jurisdiction of such custodian, may direct that he be registered in the election district in which he is a qualified elector. The proper inspectors of election shall carry out the directions of the board. In a county having a single commissioner of elections or where the duties of a board of elections are performed by a county clerk, such officer shall not have power to make any such direction. In any such county, such direction may be made by the court, upon proper proof. No application to add a name to or strike a name from the register shall be made after a day at least two days prior to the second Saturday before election.

**Derivation:** Election Law, § 31, as amended by L. 1906, ch. 675, § 3.

**Amended by** L. 1911, chs. 649 and 740; L. 1913, ch. 820; L. 1917, ch. 703, in effect June 1, 1917.

**Consolidators' note.**—The expression relating to notice of application to the court has been slightly rearranged in two places, without change of words, in the interest of clearness, in "any of his deputies when duly directed by the state superintendent of elections for that purpose," "directed" is changed to "deputed;" and in "that investigation was made by them," "them" is changed to "him," as its antecedent is singular.

The final clause of the section, providing that the presumption raised by the affidavit of the superintendent or a deputy "may be rebutted only by the oral testimony under oath or affidavit of the elector whose name is sought to be stricken from the register," is omitted, having been held to be unconstitutional in the Matter of the Application of Morgan as to name of Rolle, (1906) 114 App. Div. 45, 99 N. Y. Supp. 775.

**Cross-references.**—As to qualification of voters for registration, gaining or losing residence, etc., see Election Law, §§ 162-165, and notes thereunder.

A judge at chambers might, under L. 1894, ch. 275, § 37, strike from the registry the name of an intending voter, who, the facts affirmatively show, is not and cannot become qualified. There being dispute as to the facts, however, the voter should be left to swear in his vote at his peril. *Matter of Goodman*, (1895) 146 N. Y. 284.

*Matter of Hamilton*, (1894) 80 Hun 511, 30 N. Y. Supp. 499, and *Matter of Ward*, (1892) 48 N. Y. St. Rep. 613, 20 N. Y. Supp. 906, holding that a judge can compel a name to be added to or stricken from the registry list only when the inspectors have failed in their ministerial duty in placing the name upon the list when the applicant has taken the required oaths, etc., were practically overruled by *Matter of Goodman*, (1895) 146 N. Y. 284.

**Service of order.**—An order to show cause why the name of a person should not be stricken from the registry list need not be served upon any one except such person, although the order provides for service upon others. *Matter of Griffiths*, (1896) 16 Misc. 128, 38 N. Y. Supp. 953.

**Registration in wrong district.**—Where a person negligently registers himself in the wrong election district, the court cannot relieve him after the time for registration has expired. *Matter of Hart*, (1898) 25 Misc. 93, 53 N. Y. Supp. 1071, motion for rearg. denied 162 N. Y. 645.

**Striking names from registry in New York city.**—The amendment to this section made by Laws 1905, chapter 675, with reference to the affidavit of the superintendent of elections being presumptive evidence against the right of an elector to vote, is constitutional, as the legislature may prescribe what evidence of a fact shall be presumptive. *Matter of Morgan* (1906) 114 App. Div. 45, 99 N. Y. Supp. 775.

Such provision making such affidavit presumptive evidence is limited to the metropolitan election district, and does not apply to the rest of the State. It is nevertheless constitutional, as it is adapted to the peculiar circumstances existing in that part of the State. *Matter of Morgan*, (1906) 114 App. Div. 45, 99 N. Y. Supp. 775.

The provision of this section that notice of the application to strike the name of an elector from the register may be served by mail, addressed to his residence as given, is constitutional. *Matter of Morgan*, (1906) 114 App. Div. 45, 99 N. Y. Supp. 775.

On the hearing of an application to strike a name from the register, it is error to exclude competent common-law evidence of the elector's right to vote. *Matter of Morgan*, (1906) 114 App. Div. 45, 99 N. Y. Supp. 775.

But the provision in this section, that the presumption raised by the affidavit of the superintendent of elections, or his deputies, can only be rebutted by the oral testimony under oath or affidavit of the elector whose name is sought to be stricken from the register, is unconstitutional and void as it excludes other common-law evidence of his right to vote. *Matter of Morgan*, (1906) 114 App. Div. 45, 99 N. Y. Supp. 775.

**Presumption where name does not appear on return of lodging-house keeper.**—Where it appears that the name of a proposed elector is not upon the sworn statement filed by the keeper of a lodging house (see Election Law, § 480) from which such elector has registered, a presumption arises that he

does not reside at the place named and is not entitled to remain upon the registry list, but such presumption, however, may be rebutted. *Matter of Jacobs*, (1904) 45 Misc. 113, 91 N. Y. Supp. 596.

Application to strike the name of a registered elector from the registry list will be denied when there is any dispute about the facts or grounds for different inferences. *Matter of Jacobs*, (1904) 45 Misc. 113, 91 N. Y. Supp. 596.

A person may have a legal residence at a lodging house or hotel notwithstanding the irregularity of his visits. *Rept. of Atty.-Gen.*, (1908) 412.

Personal appearance before the board of registration of the electors who voted at the last preceding general election in a rural town is not required for their registration, but it is the duty of the board to place their names on the register, and the board will be directed to do so where, being uncertain as to its duty, the members thereof apply to the court for an order directing them in reference thereto. *Matter of Randall* (1911), 73 Misc. 539, 132 N. Y. Supp. 457.

### § 154. Register of voters.

The board of inspectors of each election district in the state shall, at their meetings for registration for the general election in each year, make a quadruplicate register—one copy by each inspector—in the forms hereinafter prescribed, of those persons, and none other, who are or will be qualified to vote in such district at such election, which register, when finally completed, shall be the register of voters of the district for such election. Such register shall be used at all other elections held in such district during the year succeeding the election for which it is made, except for town meetings and village elections for which no registration is required.

*Derivation:* Election Law, § 32, pt. of subd. 1, as amended by L. 1890, ch. 630, § 5, L. 1901 ch. 112, § 1, L. 1905, ch. 675, § 1.

*Cross-references.* Registration books to be furnished by secretary of state through county clerk. Election Law, § 182. Misconduct of registry officers and mutilation, destruction or loss of registry list. See Penal Law, §§ 753, 764 (part 5, post), and Election Law, § 184. As to certification and custody, etc., of register, see Election Law, §§ 176-180.

### § 155. Form and contents of register outside of a city of over one million inhabitants.

This section applies only to election districts outside of a city of over one million inhabitants. The leaves of the register shall be indexed from A to Z. The register for election districts in which registration is required to be personal, as to any of the electors, shall be arranged in thirty-eight columns, and for elec-

tion districts in which such registration is not required to be personal shall be arranged in twenty columns. The register for any election district shall have the first nineteen columns described below. If the register be for an election district in which registration is not required to be personal, it shall have only the first nineteen columns and the "registration remarks" column, which shall be the twentieth column, in the form prescribed for the thirty-eighth column in registers for other election districts. Subject to the foregoing provisions, the register shall be arranged and prepared as follows:

1. In the first column there shall be entered, at the time of the completion of the registration on the last day for registration, a number opposite the name of each person so registered, beginning with "one" opposite the first name entered in the page-indexed A and continuing in numerical order to and including the last name entered upon the last page of such register. In the second column shall be entered the number on the enrollment blank of the voter. On each day of registration there shall be entered in the third column the surnames of such persons in the alphabetical order of the first letter thereof, on the page bearing the index letter of such surname, and in the fourth column the christian name or names of such persons, respectively. On each day of registration, the residence address of each elector shall be entered as follows: in the fifth column, the rural free delivery number, if any; in the sixth column, the street number, if any; in the seventh column, the name of the street or avenue, if any; and in the eighth column, the name of the town, city or village. If the elector's residence cannot be described by street or avenue, a brief description of the locality of his residence shall be entered in the seventh column. The ninth column shall be reserved for the name of the party with which the elector enrolls, to be entered by the custodian of primary records, at the time prescribed by this chapter. The tenth to the fifteenth columns, inclusive, shall constitute the "primary poll-book" section of the register, and the columns therein shall be reserved for use, in the manner provided in section seventy-seven-a, at the spring and fall primaries, as follows: the tenth column for number on ballot delivered to voter at the spring primary, the eleventh column for number on ballot voted at such primary and the twelfth column for remarks, includ-



ing record as to challenges, at such primary: the thirteenth column for number on ballot delivered to voter at the fall primary, the fourteenth column for number on ballot voted at such primary, and the fifteenth column for remarks, including record as to challenges, at such primary. The sixteenth, seventeenth and eighteenth columns shall constitute the "general election poll-book" section of the register, and the columns therein shall be reserved for use, in the manner provided in article ten, at such election, as follows: the sixteenth column for number on ballot delivered to voter, the seventeenth column for number on ballot voted and the eighteenth column for remarks, including records as to challenges, at such election. In the nineteenth column shall be entered, on each day of registration, the date of registration of elector. The foregoing, together with a final column for "registration remarks," constitute the register where registration is not required to be personal as to any of the electors.

2. In election districts in which registration is required to be personal as to any of the electors, the register shall have the nineteen columns above described and continue with the columns described in this subdivision, wherein the entries provided for, with respect to any elector, shall be made on the day of his or her registration. In the twentieth column shall be entered the number of the room or floor occupied by the elector at the residence given by him or her. In the twenty-first column shall be entered the full name of the householder, tenant, subtenant or apartment lessee with whom the elector resides. In the twenty-second column shall be entered the elector's age, except that an elector over thirty years of age may state such age as "over thirty" and have it so entered in the register. In the twenty-third column shall be entered, if the elector be a citizen by marriage, the length of time that the elector has been an inhabitant of the United States. The twenty-fourth column shall be entitled "married or single?" and the appropriate word shall be entered in such column. In the twenty-fifth, twenty-sixth and twenty-seventh columns shall be entered the elector's length of residence by years, months and days, as the case may be, in the state, county and election district, respectively. In the twenty-eighth column shall be entered the country of the elector's nativity, which shall mean the country, state or province of the elector's birth, irrespective of his

former political allegiance. In the twenty-ninth column, if the elector be a naturalized citizen, shall be entered the date of the naturalization certificate under which such citizenship is claimed, or, in the case of a woman who claims citizenship by marriage, the name of the person to whom married and if the husband was a naturalized citizen the date of his naturalization certificate. In the thirtieth column shall be entered the designation of the court issuing any such naturalization certificate. In the thirty-first, thirty-second, thirty-third and thirty-fourth columns shall be entered respectively the name of the state, the city or town, and the street number and the name of the street or avenue of the residence of such person from which such person last registered or voted, and the year in which he last registered or voted. In the thirty-fifth column shall be entered if the elector is in business for himself or with others the name under which he is so in business, or, if the elector is employed by some other person, the name of his present employer. If he is not in business and has no employment the word "none" shall be entered, together with the name under which he was last in business or the name of his last employer, if any. In the thirty-sixth column shall be entered the street and number, or if it has no street number, a brief description of the location of the place, if any, where he is so in business or employed, or, if unemployed, the place, if any, where he was last in business or employed. The information required to be stated in the thirty-fifth and thirty-sixth columns shall only be asked in the event that the person offering to register shall not have registered in the same county in the general election immediately preceding. The thirty-seventh column shall be reserved for the signature, at the time of registration, of any elector who registers in any such district, or in case such elector alleges his inability to write, for entering therein the number of the identification statement for registration day made by such elector as hereinafter provided. Above each horizontal line in the said thirty-seventh column shall be printed the words "the foregoing statements are true" and the elector shall at the time of registration, sign his name by his own hand and without assistance, using an indelible pencil or ink, below such words on the horizontal line in the register of electors, which register shall be known as the "signature copy." Said signature copy shall be one of the regis-



REGISTERED AND ENROLLED VOTERS				PRIMARY POLL BOOK				General Election Poll Book			
NAME OF ELECTOR		ADDRESS		To be filled in by the Clerk of the Board of Election		SPRING PRIMARY		FALL PRIMARY		GENERAL ELECTION	
NAME	RESIDENCE	CL. P. NUMBER	CL. P. NAME	CL. P. NAME	CL. P. NAME	NAME	NAME	NAME	NAME	NAME	NAME
1	10	1	1	1	1	1	1	1	1	1	1
2	20	2	2	2	2	2	2	2	2	2	2
3	30	3	3	3	3	3	3	3	3	3	3
4	40	4	4	4	4	4	4	4	4	4	4
5	50	5	5	5	5	5	5	5	5	5	5
6	60	6	6	6	6	6	6	6	6	6	6
7	70	7	7	7	7	7	7	7	7	7	7
8	80	8	8	8	8	8	8	8	8	8	8
9	90	9	9	9	9	9	9	9	9	9	9
10	100	10	10	10	10	10	10	10	10	10	10

# INFORMATION AS TO ELECTORS

NAME OF ELECTOR		ADDRESS		To be filled in by the Clerk of the Board of Election		SPRING PRIMARY		FALL PRIMARY		GENERAL ELECTION	
NAME	RESIDENCE	CL. P. NUMBER	CL. P. NAME	CL. P. NAME	CL. P. NAME	NAME	NAME	NAME	NAME	NAME	NAME
1	10	1	1	1	1	1	1	1	1	1	1
2	20	2	2	2	2	2	2	2	2	2	2
3	30	3	3	3	3	3	3	3	3	3	3
4	40	4	4	4	4	4	4	4	4	4	4
5	50	5	5	5	5	5	5	5	5	5	5
6	60	6	6	6	6	6	6	6	6	6	6
7	70	7	7	7	7	7	7	7	7	7	7
8	80	8	8	8	8	8	8	8	8	8	8
9	90	9	9	9	9	9	9	9	9	9	9
10	100	10	10	10	10	10	10	10	10	10	10

ters, other than the public copy, which signature copy shall be kept by an inspector of opposite political faith from the chairman, and shall be used at the polls on election day. The said thirty-seventh column, in a different copy of the register, being one of the copies to be used for poll-book entries, shall be reserved for the signature or number of identification statement of elector on the day of the general election. In the thirty-eighth column, being also the final or twentieth column in election districts in which the registration is not required to be personal, shall be entered, opposite the name of each elector, under the heading "registration remarks" the facts regarding challenges, oaths and other facts affecting such elector required to be recorded, including sex of elector, to be indicated by initials "M" or "F," for male or female, as the case may be.

3. Subject to the provisions of this section, the register shall be in substantially the following form: (See opposite page.)

Former § 155, subd. 1, repealed, and new § 155 added by L. 1919, ch. 594, in effect Oct. 1, 1919.

Derivation of former § 155: Election Law, § 32, pt. of subd. 1, as amended by L. 1899, ch. 630, § 5; L. 1901, ch. 113, § 1; L. 1905, ch. 675, § 4, and L. 1906, ch. 521, § 1.

Amended by L. 1910, ch. 428; L. 1911, ch. 649; L. 1915, ch. 678; L. 1916, ch. 527; L. 1918, ch. 232, in effect Oct. 15, 1918.

Consolidators' note. — The register shall be arranged in nineteen columns "changed to "twenty" L. 1905, ch. 675, inserted in additional column but failed to change "nineteen" to "twenty"

Cross-references. — Failure of house dweller to answer inquiries. See Penal Law, § 757 (part 5, post). Lodging house keepers in cities of the first class to keep registers between September 1 and November 15. See General City Law, §§ 110-115 (part 7 post). As to duty of lodging house and hotel keepers to keep register, see Election Law, § 480.

The duties of a board of inspectors of election in attending the registration of voters in order to ascertain who are qualified electors are not of an inquisitorial nature but purely ministerial, and the questions they are permitted to ask are for the sole purpose of testing the intending voter's qualifications. *Konick v. Visser* (1916), 97 Misc. 259, 161 N. Y. Supp. 129.

Requirement that elector sign his name in inspector's register at time of registration. The provision of the Election Law made applicable to cities only of a million or more inhabitants, requiring an elector to sign his name in the inspector's register at the time of registration is a reasonable and constitutional enactment. *Ahern v. Elder* (1909), 135 N. Y. 493, 88 N. E. 1058, 80 App. Div. 900.

The distinction between greater and smaller cities and country places with respect to methods and details for safeguarding elections is necessary and proper and violates no constitutional restriction. The constitutional provision forbidding the enactment of private or local bills for the conduct of elections

is to be read in connection with that requiring the legislature to make laws "for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage." (State Const. art. 2, §§ 1, 4.) *Abern v. Elder* (1909), 195 N. Y. 493, 88 N. E. 1059, affg 130 App. Div. 900.

So long as a law regulating the right of suffrage does not add to the qualifications required of electors by the constitution the legislative will is supreme. *Abern v. Elder* (1909), 195 N. Y. 493, 88 N. E. 1059, affg 130 App. Div. 900.

**Prompting voters in answering questions.**—The provisions that no one shall prompt a voter in answering any question provided in this section refers only to prompting by another person present upon the immediate occasion when the elector is being read the prescribed questions and having his answers thereto written down at the time of registration or when offering to vote on election day. An elector is not prevented from gaining information required to answer such questions from other sources nor from referring to a written or printed memorandum. Rept. of Atty.-Gen. (1908), 403.

A native of Poland upon becoming a naturalized citizen of the United States of America cannot be deprived of his right to vote or participate at the next primary election because at the registration of voters he refused to give to the board of inspectors of election any further details as to the place of his nativity than to answer that he was born in Poland. *Kominski v. Vicer* (1910), 97 Misc. 251, 141 N. Y. Supp. 121.

**Effect of destruction of "Identification Statements for Registration Day"**—If the method of identification of electors is impaired by reason of the failure of public officers to safeguard the identification registers such impairment should not be allowed to disfranchise an otherwise qualified elector. Rept. of Atty.-Gen. (1908), 414.

**The provision that Christian names shall be given in the signature of the registry book does not apply to signatures upon an independent certificate of nomination.** *Matter of Lynch* (1919), 109 Misc. 665, 173 N. Y. Supp. 30.

## § 156. Form and contents of register in a city of over one million inhabitants.

This section shall apply only to election districts within a city having more than one million inhabitants. In all election districts in any such city, the register shall be arranged in thirty-one (at the general election preceding a presidential primary, thirty-two) columns. The leaves thereof shall be indexed from A to Z. The first column of the register shall be entitled "Registration No. of Voters," and in such column shall be entered at the time of the completion of the registration on the last day for registration, a number opposite the name of each person so registered, beginning with "one" opposite the first name entered in the page indexed A and continuing in numerical order to and including the last name entered upon the last page of such register. Columns two to twenty-six inclusive shall be filled in on each day of registration as each voter is registered, and the remaining columns at the times respectively provided. All such columns shall be appropriately entitled to indicate their pur-



pose. In the second column shall be entered the date of the registration of each voter. In the third column shall be entered the surname of such persons in the alphabetical order of the first letter thereof, on the page bearing the index letter of such surname. In the fourth column shall be entered the christian or given name or names of such persons respectively. In the fifth and sixth columns shall be entered the residence number or other designation, and the name of the street or avenue of such residence or a brief description of the locality thereof. In the seventh column shall be entered the number of the floor or room occupied by the elector at the residence given by him. In the eighth column shall be entered the full name of the householder, tenant, subtenant or apartment lessee with whom the elector resides. In the ninth column shall be entered the elector's age, except that an elector over thirty years of age may state such age as "over thirty" and have it so entered in the register. In the tenth column shall be entered, if the elector be a citizen by marriage, the length of time that the elector has been an inhabitant of the United States. The eleventh column shall be entitled "Married or single?" and the appropriate word shall be entered in said column. In the twelfth, thirteenth and fourteenth columns shall be entered the length of the elector's residence by years, months and days as the case may be, in the state, county and election district, respectively. In the fifteenth column shall be entered the country of his nativity, which shall mean the country, state or province of the elector's birth irrespective of his former political allegiance. In the sixteenth and seventeenth columns, if the voter be a naturalized citizen, shall be entered the date of the naturalization certificate under which the elector claims citizenship and the court issuing such naturalization certificate. If the elector be a woman claiming citizenship by marriage, there shall be entered in the sixteenth column the name of the person to whom married and if the husband was a naturalized citizen the date of his naturalization certificate, and in the seventeenth column the court issuing such certificate, if any. In the eighteenth, nineteenth, twentieth and twenty-first columns shall be entered respectively the name of the state, the city or town, the street number and the name of the street or avenue of the residence of such person from which such person last registered or voted, and the year in which he last registered or voted. In the

3. If the elector alleges his inability to sign in the cases provided for in either of the foregoing sections, one of the inspectors, designated by the chairman, shall read to the elector the following list of questions from a book to be furnished said inspector and to be known as "identification statements for registration day," and said inspector shall write down in said book the answers of the elector to said questions: What is your true name? What is or was your father's full name? What is or was your mother's full name? What is your occupation? What is the name of your present employer? If unemployed, what is the name of your last employer? Where is or was his place of business? Are you married or single? Where did you actually reside immediately prior to taking up your present residence; state floor and character of premises? At the bottom of each list of questions shall be printed the following statement: "I certify that I have read to the above named elector each of the foregoing questions and that I have truly recorded his or her answers as above to each of said questions," and said inspector who has made the above record shall forthwith sign his name to said certificate and date the same. The above questions shall be printed on separate sheets of paper which shall be furnished said inspector bound together in book form and numbered consecutively, and the number corresponding to the number on each sheet containing said list of questions shall be entered when the questions have been answered, in the signature copy of the register, in the column reserved for signatures and numbers of identification statements. Said book of "identification statements for registration day" shall be kept at all times with the register in which the electors sign their names as hereinbefore provided. A sufficient number of identification statements for registration and election days, bound in book form shall be furnished to each board of inspectors in the same manner as the registration and poll-books are now furnished to said boards of inspectors. The lines in the registers shall be one-half inch apart. The election officers shall not prefix to the christian or given name of an elector nor shall the elector prefix to the christian or given name in her signature the abbreviation "Mrs.", nor shall the initials of an elector's husband be included as part of the name of elector.

Former § 155, subds. 2a, 3, renumbered § 156 and amended, and subd. 4 repealed by L. 1919, ch. 504, in effect Oct. 1, 1919.

**§ 157. Preparation and distribution of registry lists: investigation of false registration.**

The board of inspectors of each election district shall, immediately after the close of the last day of registration, make and complete one list of all persons registered in their respective districts, in the numerical order of the street numbers thereof, which list shall be signed and certified by the board of inspectors. Such list shall be delivered by the chairman of the board of inspectors to the police captain of the precinct, if any, in which the election district is located, or an officer thereof, or to the town clerk, who shall forthwith deliver the same to the board of elections in the county in which such election district is located. The board of elections of each county containing a city of the first or second class and the board of elections of the city of New York, as soon as possible after the delivery of such lists, and, in the city of New York, within one hundred and eight hours after the close of each annual registration, and elsewhere not less than six days prior to the day of election, shall print in pamphlet form for each ward of any city within their respective counties, or for each assembly district in the city of New York, not less than twenty-five times as many copies of said registration lists as there are election districts in such assembly district or ward, so that each assembly district or ward pamphlet shall contain the lists of the several election districts in such assembly district or ward. Upon the written application of the chairman of the executive committee of the county committee of any political party whose candidates are entitled to a place upon the official ballot to be voted at the election for which the registration is made, the board of elections of such city or of any such county, as the case may be, shall respectively deliver to such chairman five copies of such assembly district or ward pamphlet for each election district within such city, or, in the city of New York, within each assembly

district of the county which such county committee represents. Two pamphlets containing the lists of the registered persons in the election districts within his precinct shall be furnished to each police captain in all such cities. It shall be the duty of every police captain in every city of the state to forthwith cause an investigation of each name registered in his precinct to be made and to report to the state superintendent of elections at his office in such city or at such other office as such superintendent may in writing designate any case of false registration there found. In any city of the state in which registration lists are not printed, including third class cities, it shall be the duty of the board of elections of the county or of such city to afford necessary facilities, including clerical assistance, to every such police captain in transcribing the whole or any part of the registration lists in aid of the duty of investigation imposed on him under the provisions of this section. The board of elections in each county shall furnish to the state superintendent of elections three copies of each pamphlet printed by it. The remaining pamphlets so printed shall be distributed in the discretion of the said boards, which shall have respectively the power to charge for each pamphlet a sum not exceeding ten cents a copy, and any moneys resulting from the sale thereof shall be paid to the comptroller of the city of New York or county treasurer of the county for the benefit of the treasury of such city or county. The boards of elections shall contract for the printing of such lists of registered electors with whomsoever it may seem to said board to be most advantageous to so contract, but such contract shall only be awarded after proper public notice and to the lowest bidder.

Such lists shall be made and printed as near as may be in the following form, to wit:

#### GRAND STREET.

Residence number or other designation.	Name of elector
14	Smith, John M.
15	Jones, Charles M.

Derivation: Election Law, § 32, subd. 3, as amended by L. 1897, ch. 379, § 3; L. 1899, ch. 642, § 1; L. 1901, ch. 95, § 9; L. 1905, ch. 643, § 7.

Amended by L. 1911, ch. 649; L. 1913, chs. 800 and 821; L. 1916, ch. 672; L. 1916, ch. 837; L. 1917, ch. 703, in effect June 1, 1917.

**Consolidators' note.**—The requirement that the police captain shall report any case of false registration "to his commanding officer and to the board of elections and to the said commissioners of elections," has been changed to "to his commanding officer and in cities of the first class to the board of elections or to the commissioner of elections." New York city has a board of elections, and Buffalo a commissioner (the commissioner of Erie county). There are no other cities of the first class, and no other city has either a board or commissioner of elections.

N. B.—Rochester is now a city of the first class.

**Cross-references.**—Office of superintendent of elections abolished; reports to be made to boards of elections instead. See p. 261d, post. As to mutilation, destruction or loss of registry lists, see Penal Law, § 754 (part 5, post), and Election Law, § 184.

**Alteration of lists.—Right of inspectors.** See Report of Atty.-Gen. (1904), 460.

**Failure of inspectors to comply with law in preparing register cannot deprive electors of their votes.** *People ex rel Frost v. Wilson*, (1875), 62 N. Y. 188.

**Unjustified arrest for crime of false registration, due to carelessness of election officers in preparing list by copying wrong address of a voter.** *Tanner v. Brown*, (1910) 139 App. Div. 10, 123 N. Y. Supp. 497.

## § 158. Registration in cities and in villages of five thousand inhabitants.

In cities and villages having five thousand inhabitants or more, the names of such persons only as personally appear before the inspectors, and who are or will be at the election for which the registration is made, qualified electors, shall be registered for a general election, except that whenever any election district in a village having five thousand inhabitants or more shall embrace within its boundaries territory without the limits of such village, the inspectors shall, at their first meeting for registration for a general election, place upon such register the names of all persons appearing on the register of the last preceding general election who resided without the limits of such village but within the election district and who voted at such last preceding general election, except the names of such electors as are proven to the satisfaction of such inspectors to have ceased to be electors since such general election or to have moved within the limits of such village. They shall also place upon such register, at their first and subsequent meetings, the names of all other persons residing without the limits of the village and within such election district who may then



appear before such inspectors and apply for registration and who are or who will be at the election for which the registration is made qualified electors, and also, at their first and subsequent meetings, the names of all persons not registered under the foregoing provisions who are known or proven to the satisfaction of the inspectors to be then or thereafter entitled to vote at such election and who reside within such election district but without the limits of such city or village.

Derivation: Election Law, § 33, subd. 1.

Amended by L. 1911, ch. 649; L. 1913, ch. 820; L. 1916, ch. 537, in effect May 15, 1916.

Consolidators' note. — According to the last sentence of the section, the inspectors are required "to register the names of persons known who are or will be entitled to vote, and of persons proven to the satisfaction of the inspectors who are or will be entitled to vote." On its face the provision is meaningless. The intention is to require the inspectors to register the names of persons "known or proven to their satisfaction to be then or thereafter entitled to vote," at the coming election, and the expression has been made to read so.

Cross-references. — False registration. Penal Law, § 762 (part 5, post). Procuring and presenting fraudulent certificate of naturalization in order to register. Penal Law, §§ 777-778 (part 5, post). Constitutional requirements as to registration. N. Y. Const., art. 2, § 4 (part 2, post).

Board of registration act only ministerially in receiving and registering the names of voters, and must therefore register all who conform in their application for registration to the formal requirement of the law, but must refuse registration to any who fail in such conformation. *Matter of Hamilton* (1894), 80 Hun 511, 30 N. Y. Supp. 400; *People ex rel Stapleton v. Bell* (1890), 119 N. Y. 175.

Inspectors have no right to refuse registration. — If an applicant for registration makes the proper statement and takes the required oath or affirmation his name must be entered on the list of voters, and the inspectors have no discretion or right to refuse it. The law makes it their duty to do so, yet if a person who has been refused and applies to the court for a mandamus against the inspectors and it appears that he had no right to register and was not in fact a qualified voter, would the court compel the inspectors to register him and then place him in a position that he may cast a legal vote? *Sherwood v. Bd. of Convassers* (1892), 120 N. Y. 360.

## § 159. Registration elsewhere.

At the first meeting for registration in any election district where only two meetings for the registration of voters are held



for any general election, as provided in section one hundred and fifty of this article, the inspectors shall place upon the register the names of all persons who voted at the last preceding general election, as shown by the register or poll book of such election, except the names of such voters as are proven to the satisfaction of such inspectors to have ceased to be voters in such district since such general election. They shall also place upon the register at their first and second meetings the names of all other persons who then appear before such inspectors and apply for registration and who are or will be, at the election for which the registration is made, qualified electors, and also, at their first and second meetings, the names of all persons not registered under the foregoing provisions who are known or proven to the satisfaction of the inspectors to be then or thereafter entitled to vote at such election.

Derivation: Election Law, § 33, subd. 2, as renumbered by L. 1899, ch. 630, § 7.

Amended by L. 1911, ch. 649, L. 1913, ch. 820, L. 1916, ch. 537, in effect May 15, 1916.

The name of a voter appearing upon a new register will not be stricken therefrom merely because his place of residence is not stated, for he cannot be deprived of his constitutional right to vote because the board of inspectors failed to perform a clerical duty in filling in his place of residence. *Matter of Matthews* (1911), 143 App. Div. 561.

Section 159 of the Election Law makes it the duty of the board of registration in districts where personal registration is not necessary to place upon the register the names of all persons who voted at the last preceding general election as shown by the register of such election, and it is presumed that they performed their statutory duty in this respect. *Matter of Matthews* (1911), 143 App. Div. 561.

Whatever is necessary to render effective any provision of a Constitution whether it is a grant, restriction or prohibition, must be deemed implied and intended in the provision itself. Hence, when the Constitution provides that certain voters "shall not be required to apply in person for registration at the first meeting of the" inspectors, it is implied that the legislature is prohibited from passing any statute to the contrary, because that implication is necessary to render the provision effective. *Matter of Fraser v. Brown* (1911), 208 N. Y. 127.

The legislature exceeded its power in providing that all voters residing outside of cities or villages with a population of five thousand or more whose names do not appear on the poll book of the last general election shall apply in person in order to be registered, and the attempt to impose this requirement, as made by section 6 of chapter 649 of the Laws of 1911, is unconstitutional and void. *Matter of Fraser v. Brown* (1911), 203 N. Y. 137. See also *Matter of Daniels* (1911), 74 Misc. 455.

**Duty of inspectors to act independently of formal application.**—Under the provision of this section that at the first meeting for registration in any district where only two meetings are held the board of election inspectors shall place upon the registry the names of all voters at the last election and the names of all persons then entitled to vote, it is the duty of the inspectors to act independently of any formal application by a voter and to register his name; and their failure so to do cannot prejudice his rights but an order may be granted compelling them to do so. *Matter of Daniels* (1911), 74 Misc. 455.

**Constitutionality.**—The provisions of this section, as amended by L. 1912, ch. 820 requiring proof by the applicant of himself and two qualified electors in the form prescribed as the condition of the registration of an elector, without his personal appearance at the first meeting of the registry board in districts outside a city or village having five thousand inhabitants or more, are violative of § 4, art. 2 of the constitution. *Matter of Rupert v. Rea* (1914), 212 N. Y. 514, rev'g 164 App. Div. 922.

### § 160. Registration for other than general elections.

At the meeting of the board of inspectors in a city or village having five thousand inhabitants or more, for revising and correcting the register for any election other than a general election, the inspector shall retain upon the register of their respective districts the names of all persons qualified to vote at such election in such district which appear upon the register of electors for the last preceding general election in such election district, except the names of such electors as are proven to the satisfaction of the inspectors to have ceased to be electors of such district since their names were placed upon such register, and shall, at such meeting, add only to such register the names of the persons qualified as electors who shall personally appear before the board. If, however, such elector resides within such election district but without the limits of such village, his name shall be placed upon such register, if it is shown to the satisfaction of such board that he is entitled to vote therein.

In cities any elector who was registered in an election district of such city at the last preceding general election, and who since that time shall have removed into another election district in the same city, and who is otherwise qualified to vote at such special election, shall, upon demand, receive from the board of inspectors of the district in which he was registered for such last preceding general

election a certificate duly signed by the said board of the fact that his name was upon such register and has been erased therefrom because of such removal, and his name shall thereupon be erased from such register. Upon presentation of such certificate by the elector to the board of inspectors of the election district in which he resides, his name shall be placed upon the register for such district. The inspectors must note upon the register opposite the name of such elector the fact of such removal, specifying the election district from which he has removed. They shall carefully attach such certificate to the register.

In a city of one million inhabitants or over any elector who was registered in an election district of such city at the last preceding general election, and who since that time shall have moved into another election district in the same city, and who is otherwise qualified to vote at such special election, may at any time between the issuance of the proclamation calling for such special election and the second Saturday preceding such special election personally file with the branch office of the board of elections in the borough where the elector resides an affidavit which shall specify the county, assembly district, election district and street address in which he is registered, and the county, assembly district, election district and street address into which he has moved, stating that he resides at the last mentioned address and desires to be registered therefrom. Except as hereinafter provided, upon the filing of such affidavit the board of elections shall thereupon register the name of the elector on the registers of electors for the proper election district, specifying in the remark columns of such registers the districts and locality from which such elector is transferred. At the same time the elector's registration shall be stricken from the registers of the election district where the elector formerly resided, specifying in the remark columns the district to which such elector's name has been transferred. Provided, however, that such voter shall appear before the board of elections and answer such questions concerning facts relating to his identity as such board may deem necessary. Such board shall compare the signature, if any, on the affidavit with his signature on the register of the electors. If the voter be unable to write, the board shall submit to him, in lieu of requiring his signature, the questions required for the identification statement where an applicant for registry is unable to write. The applicant shall also sign his name in the appropriate column of the register for the district to which his name is transferred. All entries relating to both the enrollment and registration of the elector shall be transcribed in the registers of the district to which he is transferred. The board of elections shall not transfer any applicant's registration unless satisfied of the identity of the applicant. In any such city, the

revision and correction of the registers shall be done by the board of elections of such city, which shall have the powers and duties of a board of election inspectors with respect to adding names to or striking names from the registers as prescribed in this section.

No elector shall cause his name to be placed upon the register of an election district for any election other than a general election, while his name shall appear upon the register of another district to be used at such election.

Any person who shall violate this provision is guilty of a felony, and upon conviction shall be punished by imprisonment in a state prison for not less than two nor more than five years.

In all election districts other than in cities or in villages of five thousand inhabitants or more, the board of inspectors in preparing for an election other than a general election shall add to the register for the next preceding general election the names of such electors as they know are or are satisfied by proof will be on the day of such election entitled to vote thereat, and shall strike therefrom the names of all persons who are known or are proven to their satisfaction to have ceased to be qualified electors of such election district.

**Derivation:** Election Law, § 33, pt. of subd. 3, as renumbered by L. 1899, ch. 630, § 7.

**Amended by** L. 1911, ch. 649; L. 1920, ch. 876, in effect May 21, 1920.

**Consolidators' note.**—On the presentation of a certificate of removal from one district to another, subdivision 3 required the inspectors to note on the register "the fact of such certificate of removal," the intent is to require notation of the fact of removal, and "certificate of" has been omitted.

**Registration for special election by elector who has moved.**—An elector who has removed from the election district in which he registered for the last general election, and who now lives in an election district in which a special election is to be held in order to become entitled to vote at his new residence should apply to the board of inspectors of the district from which he removed. Rept. of Atty-Gen. (1907), 482.

### § 161. Registration for town or village elections.

No registration of voters shall be required for town or village elections, except as provided in the village law, and except that when a town or village election is held at the same time with a general election all voters in such town or village to be entitled to vote at such town or village election must be registered as provided by law for the registration of voters for any general election in such town or village.

**Derivation:** Election Law, § 33, pt. of subd. 3, as renumbered by L. 1899, ch. 630, § 7; also § 34, subd. 11, as added by L. 1902, ch. 405, § 2.

**Amended by** L. 1910, ch. 424, in effect June 8, 1910.

**Cross references.**—Town meetings and elections. See part 8, post, Village elections. See part 9, post.

Registration is not required as a prerequisite for voting at a special town meeting held pursuant to an order of a court or judge for the resubmission of questions under section 13 of the Liquor Tax Law. Rept. of Atty-Gen., Feb. 8, 1912.

### § 162. Qualifications of voters.

A person is a qualified voter in any election district for the purpose of having his or her name placed on the register if he or she is or will be on the day of election qualified to vote at the election for which such registration is made. A qualified voter is a citizen who is or will be on the day of election twenty-one years of age, and who has been an inhabitant of the state for one year next preceding the election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he or she offers his or her vote. If a naturalized citizen, such person must, in addition to the foregoing provisions, have been naturalized at least ninety days prior to the day of election, or, if a citizen by marriage must have been an inhabitant of the United States for five years prior to such day.

**Derivation:** Election Law, § 34, subd. 1.

**Amended by** L. 1912, ch. 821; L. 1915, ch. 678; L. 1918, ch. 8, in effect Feb. 19, 1918.

**Cross-References.**—Qualifications generally. See N. Y. Const., art. 2, § 1 (part 2, post). As to persons excluded from right of suffrage, see N. Y. Const., art. 2, § 2 (part 2, post). Certain occupations and conditions not to affect residence of voters. N. Y. Const., art. 2, § 3 (part 2, post). Voting after conviction of infamous crime. Penal Law, § 765 (part 3, post). Buying or selling votes. Penal Law §§ 768-770 (part 3, post). Voting by inhabitant of another State or country and illegal voting generally. Penal Law, § 765 (part 3, post). Furnishing money or entertainment to induce attendance at polls. Penal Law, § 767 (part 3, post). For United States statutes relating to citizenship, naturalization, the elective franchise and crimes against the elective franchise, see part 3, post. When women qualified to vote. Town Law, § 53 (part 3, post).

A "voting residence" as distinguished from the place where one actually and habitually dwells, is not recognized by the law. It is the fixed and permanent home of the elector from which the Election Law contemplates that the elector will register and vote. *People ex rel. Driscoll v. Board* (1913), 82 Misc. 671, 674.

The true intent of a person for the purpose of registering depends, not upon a mere extrinsic of his will, but upon his purpose as evidenced by his conduct. There is no such thing as a voting residence as distinguished from an actual residence, and the word "residence" as used in the Election Law and in the Constitution, is synonymous with "domicile." A man's residence for the purpose of voting is his domicile—his permanent home, although, it seems, a man may have two homes and two residences and may elect which shall be his residence for the purposes of his political rights, but he cannot be a political resident of both domiciles. So a person who owns a saloon where he originally resided but from which he has moved, and who has established a domicile for himself and family in another place, cannot continue to register from the saloon, although he may occasionally go to the saloon and sleep in it. But a person who owns a house in which he originally resided and which he now rents to tenants can continue to register from such a house, although he is employed as caretaker of a country and occupies the renter's house within the city's grounds, for the latter residence is not permanent and depends upon the duration of his employment. A person who has once had a domicile may retain the same for voting purposes until he gains a new domicile elsewhere. *Matter of Honner* (1916), 172 App. Div. 274, 139 N. Y. Supp. 132.

**Right to vote** is subject to regulations lawfully prescribed by the legislature. *People ex rel. Nichols v. Board of Canvassers* (1892), 129 N. Y. 401.

The voting residence of a married woman is that of her husband, unless for good and legal reasons they are permanently separated. *Opinion of Atty.-Gen.*, May 10, 1918.

Women are not qualified generally. *People v. Barber* (1888), 48 P. 2, 102. Not qualified to vote for school commissioner. *Matter of Gage* (1894), 141 N. Y. 112.

The age of twenty-one is completed on the beginning of the day preceding the anniversary of a person's birth. *Reports of Atty.-Gen.* (1897), 301 (1898), 263.

**Disfranchisement.** In construing an act of Congress, the court held that if the act declares a descriptor of the right to vote his vote could only be rejected upon proof by a duly authenticated record of the conviction. *Goetzche v. Mathewson* (1875), 65 N. Y. 425.

**Locality of county house.**—Proper place to vote. *Report of Atty.-Gen.* (1902), 204.

**Computation of time for determining legal residence.** *Report of Atty.-Gen.* (1904), 452.

**Convicts on parole cannot vote.** *Report of Atty.-Gen.* (1906), 490.

**Location of polling-place outside of election district** does not prevent voters of district voting thereat under constitutional provision that voter must vote "in the election district of which he shall at the time be a resident, and not elsewhere." *People ex rel. Lardner v. Carson* (1896), 135 N. Y. 491, aff'd 80 Hun, 617, 35 N. Y. Supp. 1114, 10 Misc. 237, 30 N. Y. Supp. 817.

**The right of citizenship and that of suffrage are separate rights.**—The latter is not coextensive with the former, but is rather to be deemed a privilege which the citizen cannot exercise unless he shows himself possessed of the necessary qualifications. *People ex rel. Juarbe v. Inspectors of 24th Election District* (1900), 25 Misc. 264, 67 N. Y. Supp. 234.

The facts that a native of Porto Rico, never naturalized under our laws, did not preserve his allegiance to Spain, but sought to adopt the nationality of the United States and served with its army of occupation during the war, do not entitle him to be registered in the State of New York as a qualified voter, as that clause of the treaty of peace with Spain which provides that "the civil right and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress."



left the whole matter of the collective naturalization of Porto Ricans to Congress, and its inaction has precluded them from the privileges of full citizenship which are necessary to the rights of suffrage. *People ex rel Jaurio v. Inspectors of the 24th Election District*, (1900) 32 Misc. 584, 67 N. Y. Supp. 230.

A person residing upon West Point and having no other qualification as a resident of the State except that he is an inhabitant of a residence upon West Point is not a resident of the State and not qualified to vote. *Matter of Town of Highlands*, (1897) 48 N. Y. St. Rep. 766, 22 N. Y. Supp. 137.

### § 193 Gaining or losing a residence.

For the purpose of registering and voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas, nor while a student of any seminary of learning, nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity, nor while confined in any public prison. Any person claiming to belong to any class of persons mentioned and referred to in this section shall file with the board of inspectors at the time of registration a written statement showing where he actually resides and where he claims to be legally domiciled, his business or occupation, his birth, new address, and to which class he claims to belong. Such statement shall be attached to the register, and be open for public inspection, and the fact thereof shall be noted in the register opposite the name of the person so registered.

**Derivation:** Election Law, § 34, subd. 2.

**Amended by L. 1918, ch. 323, in effect Apr. 24, 1918.**

**Cross-references.**—Certain occupations and conditions not to affect residence of voters. N. Y. Const. art. 2, § 3 (part 2, post).

**Forms.**—Of affidavit as to residence. See Forms (part 12, post).

**Persons unable to get possession of premises.**—An affidavit stating, among other things, that the petitioner's brother-in-law with whom he had been living for several years, had taken a lease of premises in another election district, but had failed to get possession because of an order of the court in a dispute proceeding giving the tenant time in which to get out, held insufficient to entitle the petitioner to registration in the election district in which the leased premises were located, and that therefore an order denying his petition for a writ of mandamus to the board of registration must be affirmed. *Matter of Gorman v. Board of Registration*, 140 App. Div. 107, 118 N. Y. S. 275.

A soldier may acquire a residence in the locality in which he is placed by reason of his employment in the service of the United States. *Matter of Cunningham* (1904), 45 Misc. 208, 91 N. Y. Supp. 674.

Persons employed by the United States may gain a residence where employed. *Report of Atty. Gen.*, (1904), 443.

Where a person enlisted in the Spanish-American war and subsequently accepted employment under the government and actually resides in a Federal arsenal, he may continue to register for voting purposes from his former residence where there is no question of his good faith. Nor does he lose his right to vote because he did not file with the registration officers the statement showing his actual domicile, business or occupation though it seems, he should have complied with said section had it been called to his attention. *Matter of Lewis* (1910), 172 App. Div. 271, 138 N. Y. Supp. 1030.

**Student of seminary of learning.**—One who is present in a seminary of learning for the purpose of a student only does not thereby gain a new residence in the seminary district and lose his prior one for the purpose of voting. *Matter of Goodman* (1893), 105 N. Y. 284.

Occupants of Mount St. Alphonsus, a branch of "the Congregation of the Most Holy Redeemer," are not entitled to vote in the town where such institution is located, where there is nothing to indicate that they would be there, except for the fact that they are students. The fact that their location and vocation is determined for them by their superior rather than by themselves does not affect the question. The right of occupants to vote in the town where the institution which they attend is located must depend on facts independent of their presence as students in that locality. *Matter of Gardiner* (1918), 183 App. Div. 491, 171 N. Y. Supp. 257.

A student at a seminary in the State of New York, who, before taking his abode at the seminary, had a residence elsewhere, is not entitled to vote in the election district in which the seminary is situated unless it appears that by some unusual accident he, in the event of his attendance at the seminary he has abandoned such other residence. *Matter of McCormack* (1903), 86 App. Div. 362, 88 N. Y. Supp. 847.

Letters written by a student at a seminary in the State of New York to the mayor of the city and to the board of registry in the election district in which the seminary is located, stating that it was his intention, when he became a student at the seminary, to make it his actual and legal residence, but which did not suggest any facts showing such a change of residence other than his abode at the seminary, are insufficient to show a change of residence. *Matter of McCormack* (1903), 86 App. Div. 362, 88 N. Y. Supp. 847.

Residence for the purpose of voting is neither gained nor lost by a sojourn in a seminary of learning, and the fact that a student enters a seminary to be educated for a certain course and to remain there after graduation until assigned to duty instead of a fixed course for four years, as is usual in institutions of learning, does



not entitle him to vote in the election district in which such seminary is situated. *Matter of Barry* (1900), 104 N. Y. St. Rep. 148, aff'g 90 N. Y. St. Rep. 124, 62 N. Y. Supp. 124.

It is essential to entitle a student, whose legal residence has been previously elsewhere, to vote in the election district in which the seminary which he is attending is situated that the intent to change his residence be manifested by things which are independent of his presence as a student in the new locality. *Matter of Garvey* (1905), 147 N. Y. St. Rep. 303, aff'g and rev'g in part 34 Hun, 611, 32 N. Y. Supp. 629.

A student at a theological seminary is entitled to vote at the place where the seminary is located, where he notifies the proper authorities at the place of his former residence that he has changed his residence and requests his name to be taken from the list of voters, and notifies the proper religious authorities that he has changed his ecclesiastical residence. *Matter of Garvey* (1905), 147 N. Y. St. Rep. 303, aff'g and rev'g in part 34 Hun, 611, 32 N. Y. Supp. 629.

The fact that a theological student at a seminary sells books and is a lay reader, or that he teaches, is insufficient to qualify him to vote where the seminary is located. *Matter of Garvey* (1905), 147 N. Y. St. Rep. 303, aff'g and rev'g in part 34 Hun 611, 32 N. Y. Supp. 629.

The statute contemplates a bona fide residence on the part of the student. Although the statute is complied with if a student at the time of registration files a written statement or declaration showing where he is actually domiciled, his business or occupation, his business address and to which class he claims to belong, he should, in order to establish his good faith and honesty of intention of becoming a resident, declare his intention a certain length of time before the date of registration. *Repl. of Atty.-Gen.*, Apr. 26, 1970.

A student at the seminary of learning known as "St. Anthony's-on-the-Hill," maintained by the Franciscan order, who abandons his christian name by which he was formerly known and takes a new name as a member of said order and receives instruction as a candidate for the Roman Catholic priesthood, is not entitled to register in the election district in which the seminary is located and his name should be stricken from the registry list. *Matter of Gardner* (1917), 101 Misc. 414, 167 N. Y. Supp. 26.

Person at institution supported at public expense or charity.—The home for aged men in the town of Glens, county of Albany, is an institution supported wholly or partly by charity, within the meaning of section 3 of article 2 of the Constitution as amended in 1895. Such amendment is not retroactive and does not deprive an inmate of such institution who gained a residence to vote in the district prior to January 1, 1895, of his right to vote therein. *Matter of Batterman* (1895), 14 Misc. 213, 71 N. Y. St. Rep. 515, 35 N. Y. Supp. 691.

The "Home for Aged Men and Couples" in the city of Utica, N. Y., is the residence of its members for the purpose of voting. *Matter of Merrill* (1917), 50 Misc. 333.

An inmate of an institution supported wholly or partly by charity who has gained a legal voting residence in the district prior to the taking effect of the Constitution of 1894 is not deprived of his right to vote by the provisions of section 3 of article 2 of said Constitution. *Matter of Griffiths* (1896), 16 Misc. 128, 38 N. Y. Supp. 903.

A soldier kept in the Soldier's Home maintained in a town by the State is a person kept in an "asylum," and does not, when becoming an inmate of the home for the sole purpose of enjoying its benefits, thereby lose his former residence, which remains his domicile for citizenship. *Matter of Smith* (1904), 44 Misc. 384, 89 N. Y. Supp. 1006.

A person permitted to remain in Bellevue Hospital, which is supported at the public expense, during the pleasure of the superintendent of the institution, who has no authority to employ unpaid help, under an arrangement by which such person is to get his board and lodging and an occasional suit of dead men's clothes, is "kept" in the hospital within the meaning of this section. *People ex rel. McShane v. Hagen*, (1900), 48 App. Div. 203, 62 N. Y. Supp. 816, aff'd 104 N. Y. 570.

The removal to the Soldiers' Home at Bath by a legal voter whose legal residence is in New York City neither gives him a new voting residence at Bath nor deprives him of his old voting residence at New York City; he is temporarily absent therefrom and is legally entitled to vote there on his return. *Thayer v. Tablany* (1887), 107 N. Y. St. Rep. 185, rev'g 42 Hun 116, 5 N. Y. St. Rep. 187.

Inmates of an institution partly supported by charity do not gain a residence. *Report of Atty.-Gen.* (1904), 378.

An inmate of a home for aged men situated in an election district in the city of New York, which institution, though originally founded by charitable gifts, is now self-supporting with the exception that it occasionally receives voluntary con-

tributions from outsiders is entitled to register as a resident of such institution and to vote as such resident where he has claimed such residence as a voting domicile for many years. The fact that such institution is empowered to take and administer gifts made to it does not make it a charitable institution. Moreover, the statute and the constitutional inhibition of which it is a re-enactment do not seek to disqualify any person from the voting privilege. They merely declare that he shall not be deemed to have gained or lost a residence while kept in an institution wholly or partially supported by public expense or by charity. *Matter of Merrill* (1918), 182 App. Div. 218, 171 N. Y. Supp. 161.

**Prisoners.**—The constitutional provision against gaining a residence while confined in a public prison applies to a person committed to such prison, even if the commitment was made upon his own application, notwithstanding the fact that he had no family and no home and made the application for the commitment to gain a home and work in the prison. *People v. Cady* (1894), 143 N. Y. 100, 60 N. Y. St. Rep. 474.

**In general.**—The question as to the place at which an elector is entitled to vote, notwithstanding the provision of the Constitution that, for the purpose of voting, no person shall be deemed to have lost or gained a residence by reason of his presence or absence while employed in the service of the United States is still, in each case, as it was before the adoption of this provision, one of domicile or residence to be decided upon all the circumstances of the case. *Matter of Cunningham* (1904), 43 Misc. 200, 91 N. Y. Supp. 874.

It seems that the subsequent demolition of the building bona fide given as a residence does not invalidate the registration therefrom. *People ex rel. Perry v. Hagan* (1906), 25 Misc. 125.

### § 164. Illiterate and disabled voters.

If, at any meeting for the registration of voters, any person entitled to be registered shall appear personally for registration and shall declare to the board of inspectors at the time he applies for registration that he is unable to write by reason of illiteracy, or that he will be unable to prepare his ballot without assistance by reason of blindness, or of such degree of blindness as will prevent him, with the aid of glasses, from seeing the names printed upon the official ballot, loss of both hands, or such total inability of both hands that he cannot use either hand for ordinary purposes, or that he will be unable to enter the voting booth without assistance by reason of disease or crippled condition, the nature of which he must specify, it shall be the duty of the said board of inspectors to administer an oath to such person in the following language namely: "You do solemnly swear (or affirm) that you will be unable to prepare your ballot without assistance, because," and after the word "because," continuing with a statement of the specific disease or crippled condition assigned by the person as the cause of his alleged disability, and the said inspectors and each of them shall make a note upon the register of each instance in which such oath is administered, and of the cause or reason so assigned.

**Derivation:** Election Law, § 34, subd. 3.

**Amended by L. 1919, ch. 370, in effect May 5, 1919.**

**Secrecy in voting** does not require that the voter must so cast his ballot that none other than he may know for whom it is cast, to the extent of preventing the casting of the vote by an illiterate or disabled person. *People ex rel. Klein v. McDonald*, (1896) 52 N. Y. Supp. 896.

**Physical disability oath** should be in the language of the statute. *Report of Atty. Gen.*, (1893) 147.

**Preparation of ballots by illiterate voters.** *Report of Atty.-Gen.*, (1906) 841.

### § 165. Change of residence within election district.

If any voter after being registered shall change his place of residence within the same election district, he may appear before the board of inspectors of such district on any day of registration, or on the day of election, and state under oath that he has so changed his residence, and the board of inspectors shall thereupon make the proper correction upon the register of such district.

**Derivation:** Election Law, § 34, subd. 4.

### § 166. Registration days not holidays.

No part of a day fixed for the registration of voters shall be deemed a holiday so as to affect any meeting or proceeding of the board of inspectors for registration.

**Derivation:** Election Law, § 34, subd. 6.

§ 167 Preparation of challenge affidavits.

The secretary of state shall prepare and cause to be printed on good writing paper in book form wherever he deems it desirable for the best interests of the state, at least fifteen blank challenge affidavits for each election district in cities and at least ten such blanks for each election district outside of cities and shall transmit to each board of elections or other officer to whom or which he is required to deliver the register of voters, at the same time and in the same manner as such register of voters is transmitted, a sufficient number of such books of blank challenge affidavits as shall provide one such book for each board of inspectors in each county, and such officers shall transmit the said books to the respective boards of inspectors in the same manner and at the same time as the register of voters. The secretary of state shall also furnish to such board such additional number of such books of challenge affidavits and copies thereof, as hereinafter provided, as in his judgment shall be necessary to replace lost or damaged books and to provide extra books to any election district in which the supply may be exhausted during the registration of voters. Such extra books shall be furnished by such board to the inspectors upon application by the inspectors or any citizen.

Derivation: Election Law, § 34 pt. of subd. 6, as amended by L. 1899, ch. 640, § 5; L. 1901, ch. 544, § 1.

Amended by L. 1914, ch. 244, in effect Apr. 2, 1914.

Challenge affidavits are to be furnished, although there is no appropriation therefor. Report of Atty.-Gen., (1879) 278.

§ 168. Form of challenge affidavits.

Each challenge affidavit shall have a stub attached thereto and separated from such affidavit by a perforated line with a space on such stub for writing the name and the address of the challenged person, and both the stub and affidavit shall bear the same printed number and shall be numbered in consecutive order in each book, beginning with number one. Such challenge affidavit shall be printed in the following form, to wit:

(Stub)

Name of applicant .....  
Address .....

(Perforated line)

CHALLENGE AFFIDAVIT

State of New York }  
County of ..... } as:

Election District  
Assembly District (or Ward)

City (or town) of .....  
What is your true name? .....  
Where do you actually reside? .....  
Under what name are you known at that address? .....  
Are you a householder? .....

- What is the name of the householder with whom you reside? .....
- What is the character of the house in which you reside? (By character is meant whether it is a hotel, lodging house, tenement, furnished room house, or private dwelling.) .....
- How old are you? .....
- Where were you born? .....
- If naturalized, give name of court issuing and date of certificate .....
- What is your occupation? .....
- What is the name of your present employer? .....
- Where is his place of business? .....
- What is the name of your last employer? .....
- Where is or was the place of business? .....
- When did you last register or vote? .....
- From what address did you last register or vote? .....
- City or town. .... Street and number. ....
- How long have you been an inhabitant of this state? .....
- How long have you been a resident of this county? .....
- How long have you been a resident of this election district? .....
- Are you married or single? .....
- If married, where does your family reside? .....
- If single, where do your parents reside? .....
- How long do you contemplate residing in this election district? .....
- Give place or places by street and number, the city, town or village of your residence or residences during the past four months. ....
- Where did you actually reside immediately prior to taking up your present residence? .....
- Have you been convicted of felony? .....
- If so, have you been pardoned and restored to all the rights of citizenship? .....
- When? .... By whom? .....
- Have you made any bet or wager, or are you directly or indirectly interested in any bet or wager depending on the result of the next ensuing election? .....
- Have you received or offered to receive, or do you expect to receive, any money or other valuable thing as a compensation or reward for registering or for giving your vote or refraining from voting at the next election? .....
- Have you paid, offered or promised to pay, contributed, offered or promised to contribute, to another, to be paid or used, any money or other valuable thing, or made any promise, to influence the giving or withholding of any vote at the next ensuing election? .....
- I, the undersigned, do hereby solemnly swear (or affirm) that the answers to the above questions were given by me and that they are true answers to such questions.
- (Signature of applicant.) .....

## Description of applicant.

Height..... Color of hair.....  
 Weight..... Hair on face.....  
 Color..... Kind of nose.....  
 Marks on face or hands.....  
 Distinguishing marks.....

I, the undersigned, an inspector of election of the above designated election district, do hereby certify that the within named person did on this day personally appear before the board of inspectors of this election district and did make application to have his name enrolled upon the register of voters of this said election district, that he was challenged and was sworn by me and did make the answers set opposite the printed questions upon this affidavit and signed the same in my presence.

Dated this ..... day of October, 10

Name ..... Residence .....

Inspector of election .....

(To be signed by the inspector administering oath to applicant.)

Witnesses.

Name .....	Residence .....	Inspector of Election .....
Name .....	Residence .....	Inspector of Election .....
Name .....	Residence .....	Inspector of Election .....

(Board of inspectors.)

Name of challenger.....

Residence of challenger.....

Certification: Election Law, § 16, pt. of subd. 3, as amended by L. 1895, ch. 635, § 1, L. 1897, ch. 544, § 1.

## § 169. Challenging applicants for registration.

1. Any person who applies personally to any board of inspectors for registration for any election may be challenged by any qualified elector present or by any qualified watcher present.

2. If such applicant be so challenged, or if any member of the board of inspectors shall have reason to suspect that such applicant is not entitled to have his name registered, the chairman of the board of inspectors or any member of such board is hereby authorized to and shall administer to such applicant the following oath: "You do solemnly swear (or affirm) that you will true answers make to the questions touching upon your qualifications as an elector and such other questions as may be put you tending to establish your identity," and one of the inspectors shall thereupon read to such challenged person each and every question printed upon the challenge affidavit provided for by section one hundred and sixty-eight and shall enter in ink opposite each question the answer thereto given by such applicant. The applicant shall subscribe his name to such challenge affidavit, which shall also be subscribed by the inspector administering the above oath and as witnesses by the other inspectors present, who shall certify over their names the fact that the applicant did apply for registration, that he was duly sworn, and that the answers set opposite the printed questions are the true answers given to such questions by the challenged applicant. The inspector shall also enter in the pre-



provided on the challenge affidavit a description of the person challenged and the name and address of the person challenging. At the same time the blank affidavit bearing the same number in the book of duplicate challenge affidavits shall be filled out by another inspector and shall be signed by the same persons, so that both affidavits shall be duplicates of each other. If the applicant shall by his answers satisfy a majority of the board of inspectors of his right to be registered, they shall register his name as an elector; if not, they shall point out to him the qualifications which he lacks as an elector and his name shall not be registered except as provided by section one hundred and fifty-three of this article, and upon any such proceeding the challenge affidavit of such applicant shall be submitted in evidence to such court, justice or judge. If the applicant shall refuse to make oath to the questions put to him and the answers given thereto by him or shall refuse to answer any questions upon the challenge affidavit, his name shall not be placed upon the register, or if recorded thereon previous to his ascertained qualification as an elector, the inspectors shall enter in the remark column after such name the word "disqualified," and no person shall be allowed to vote on such name at the election. When the name of a person who has signed a challenge affidavit shall be registered, the inspectors shall enter in the column headed "remarks" on the register opposite such name the word "affidavit," giving the consecutive number printed on such affidavit.

Derivation: Election Law, § 34, pt. of subd. 6, as amended by L. 1899, ch. 630, § 8; L. 1901, ch. 544, § 1.

Amended by L. 1910, ch. 428; L. 1911, ch. 649; L. 1918, ch. 323, in effect Apr. 21, 1918.

Consolidators' note.—The last sentence of the new section relating to the entry of the word "affidavit" in the register in the old section followed what is now section 170, and is unchanged in substance. The sentence relating to false statements, here omitted, is placed in new section 181, with other provisions relating to penalties.

### § 170. Investigation into truth of affidavits.

At the close of each day of registration the inspectors of election shall detach from the stubs the challenge affidavits signed by the persons challenged during the day and in cities shall deliver them to the police captain of the precinct in which the election district is located or to an officer thereof, and such police captain or commanding officer of such precinct shall immediately cause an investigation of the truth of such affidavit to be made, and if such investigation shall prove the same to be false in any particular affecting the right of the challenged person to register or vote, the said officer shall deliver the same to the district attorney of the county together with the evidence of the falsity of such affidavit and the district attorney shall forthwith present the same to the grand jury of such county. In cities and in districts outside of cities such affidavit shall be delivered by the inspectors to the sheriff of the county who shall proceed in like manner. Copies of all such challenge affidavits shall be mailed by the police or sheriff forthwith at the close of each day of registration to the State superintendent of elections who shall proceed in like manner.

Derivation: Election Law, § 34, pt. of subd. 6, as amended by L. 1899, ch. 630, § 8; L. 1901, ch. 544, § 1.

Amended by L. 1911, ch. 649; L. 1915, ch. 678, in effect May 22, 1915.

Consolidators' Note.—Two sentences are omitted after the matter in this section, and appear, the one at the end of section 169 and the other in § 172.



### § 171. Duplicate book of challenge affidavits.

The secretary of state shall also furnish for each election district a duplicate book of challenge affidavits, but without the stubs. On the outside cover shall be printed "Duplicate Original Challenge Affidavits for Registration," together with appropriate instructions for their use. Such duplicate books shall be delivered to the boards of inspectors of election at the same time and in the same manner as the original books. After the close of registration upon the first registration day such duplicate book shall be kept at all times with the signature copy of the register for the same election district, and shall be produced at each subsequent registration day, and on election day for ~~use~~ when voters challenged upon registration may appear to vote.

Former § 171 amended by L. 1911, ch. 649, and repealed by L. 1914, ch. 244; now § 171 added by L. 1918, ch. 323, in effect Apr. 24, 1918.

### § 172. Disposition of challenge affidavits.

At the close of the last day of registration the inspectors shall file the book of stubs and unused challenge affidavits with the officer from whom it was received by the inspectors and such officer shall preserve it in his office.

The officer or board with whom the original challenge affidavits or copies thereof are filed may destroy the same six months after the date of the election for which they were made, except those which are to be used in any criminal prosecution.

Derivation: Election Law, § 34, pt. of subd. 6, as amended by L. 1892, ch. 629; S. L. 1901, ch. 544, § 1.

Consolidators' note. In the "old" law, the first sentence of this section followed (with one sentence between) what is now section 170. The second sentence was the last sentence of the old subdivision.

### § 173. Entry requiring challenge by inspectors.

If at a meeting of the board of inspectors for registration, any voter called upon oath declare that he has reason to believe that any person on the register of voters will not be qualified to vote at the election for which the registration is made, the board of inspectors shall place the words "to be challenged" opposite the name of such person, and when such person shall offer his vote at such election, the general oath as to qualifications shall be administered to him, and if he shall refuse to take such oath he shall not be permitted to vote.

Derivation: Election Law, § 34, subd. 7.

Form. As to form of oath for record of challenge, see Forms (part 12, post). As to preliminary and general oath required of voter challenged, see Election Law, §§ 362-363.

Power of board to determine question of residence. — Where a voter has complied with all the statutory requirements as to registering, the board of inspectors cannot determine a contested question of fact as to the residence of such voter. Matter of Ward (1892), 29 Abb. N. C. 187, 48 N. Y. St. Rep. 613, 33 S. Y. Supp. 600.

### § 174. Production of naturalization papers.

It shall be the duty of every naturalized citizen before being registered to produce to the inspectors, if any inspector shall require, his naturalization papers or a certified copy thereof for their inspection, and to make oath before them that he is the person purporting to have been naturalized by the papers so produced, unless such citizen was naturalized previous to the year eighteen hundred and sixty seven. If, however, such naturalized citizen can not for any reason produce his naturalization papers, or a certified copy thereof, the board of inspectors, or a majority of such board may place the name of such naturalized citizen upon the register of voters upon his furnishing to such board evidence which shall satisfy such board of his right to be registered.

Derivation: Election Law § 34, subd. 8, as amended by L. 1906, ch. 676.

Cross-references. Procuring or presenting fraudulent certificates of naturalization in order to vote. Penal Law, §§ 777, 778 (part 5, post).

Production of secondary evidence. If a party applying for registration has his naturalization papers in his possession he should produce them, but

If they cannot be found, secondary evidence of their contents must be received. *People ex rel. Noel v. Smith* (1894), 10 Misc. 190, 31 N. Y. S. 190.

Inability to produce the naturalization papers of his parents will not deprive a person his right of proving his citizenship before a board of registry by secondary evidence. The person's own oath in the absence of impeaching testimony makes out a prima facie case. *People ex rel. O'Donnell v. McNally*, (1890), 59 How. Pr. 500.

A judgment of naturalization by a court of competent jurisdiction cannot be attacked or impeached collaterally by a board of inspectors. *People ex rel. Christern v. Walsh* (1880), 9 Abb. N. C. 405.

### § 174-a. Proof of citizenship by marriage.

Before registering in any district in which personal registration is required, and before voting in any other district, it shall be the duty of every woman who is or becomes a citizen by marriage to produce to and file with the inspectors at the time of registering or voting, as the case may be, if any inspector shall require, additional proof by affidavit of her right to vote at such election. In such affidavit she shall state the true name of her husband, the date of the marriage, the place where such marriage was performed, the number of years she has been an inhabitant of the United States, and the place or places, including the street address, at which she has resided during the five years next preceding the date of the election at which she desires to vote, the residence of her husband, and that, either she is residing with her husband at the address from which she intends to register or vote and that he resides at such address, or that her husband is dead, or that she is living separate and apart or has been divorced from him as the case may be, and if so separated or divorced his present residence if known to her, and in the case of citizens by reason of marriage to naturalized citizen she shall also present his naturalization papers or a certified copy thereof, or in default thereof she shall show in said affidavit the court by which and the date on which he was naturalized, that she has made a bona fide effort to obtain a certified copy of such naturalization papers and the reason for her default. Such affidavit may be sworn to at the time of registration or voting as the case may be before any inspector of elections, and shall be preserved and disposed of as is the signature copy of the register of voters under the provisions of the election law.

Blanks for such affidavits for proof of citizenship by marriage shall be provided by the custodian of primary records for each election district, equal in number to the number of sample ballots required to be furnished for such election district at the last preceding general election. One of such certificates shall be furnished upon application during the hours for registering and voting on any day of registration or election to any woman claiming to be a citizen by marriage entitled to vote in such election district.

Added by L. 1918, ch. 323, in effect Apr. 24, 1918.

### § 175. Persons excluded from the suffrage.

No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or any other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or for registering or refraining from registering as a voter, or who shall make any promise to influence the giving or withholding any such vote or registration, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of

an election, shall vote at such election. No person who has been convicted of a felony shall have the right to register for or vote at any election unless he shall have been pardoned and restored to the rights of citizenship.

**Derivation:** Election Law, § 34, subd. 10, as added by L. 1901, ch. 654, § 2.

**Cross-References.** — As to qualifications of voters and exclusion from right of suffrage, see Election Law, § 162, and note thereunder.

**Suspension of sentence.** — A person against whom sentence has been suspended after verdict has not been convicted of an infamous crime within the meaning of the Constitution or the statutes enacted in pursuance thereof, and is not liable to indictment for voting at an election. *People v. Fabian* (1904) 102 N. Y. 443, 82 N. E. Rep. 472, rev'g 120 App. Div. 69, 111 N. Y. Supp. 146.

**Restoration to citizenship.** — Felon must be restored to citizenship before he can vote. Report of Atty. Gen., (1905) 531.

Alien minor convicted of felony must be restored to citizenship before he can become a naturalized citizen. Report of Atty.-Gen., (1904) 257.

A person convicted of counterfeiting, who upon his release is restored to full civil rights by the federal government, is not debarred by such conviction from voting in the state of New York, if otherwise qualified. Report of Atty.-Gen. (1911), vol. 2, p. 407.

#### § 176. Certification of register.

At the close of each meeting for the registration of voters, for a general or other election in a city, or in an election district wholly within a village having five thousand inhabitants or more, the inspectors shall append to each book of registration their certificate to the effect that such register as it now is, comprising there insert the number) names, is a true and correct register of the names and residences of all the voters qualified to vote at such election in such district, who have personally appeared before the board of registration, and such registers so certified shall be presumptive evidence that the names and places of residence contained thereon are the names and places of residence given by the persons registered respectively.

At the close of each meeting for the registration of voters for a general or other election elsewhere than in a city, or in a district wholly within a village having five thousand inhabitants or more, the inspectors shall append to each book of registration a certificate to the effect that such register as it now is, comprising there insert the number) names, is a true and correct register of all voters qualified to vote at such election in such district who have personally applied for registration, or whose names the board was required by law to place thereon.

Each such certificate shall be signed by all the inspectors, but in case one inspector required to sign such certificate shall fail for any reason so to do, he may be required by the officer with whom such register is filed to sign such register at a subsequent date. In all cases a majority of the inspectors must sign such certificate at the close of each day of registration.

**Derivation:** Election Law § 25, subd. 1.

The provisions as to certifying and regarding the registers are merely directory, and a failure on the part of the inspectors to properly observe the law in this respect will not operate to invalidate the registers and deprive citizens of their votes. *People ex rel. Frost v. Wilson* (1875), 32 N. Y. 156.

#### § 177. Making up the registers; custody thereof after registration.

1 The register of voters made by the chairman of the board of inspectors shall be, and shall be known as, the public copy of registration. Such public copy shall be left in a prominent position in the place of registration from the first day of registration until election day, and shall at all reasonable times be open to public inspection and for making copies thereof. When the

place of registration is in a schoolhouse, or other public building, authorized to be so used under subdivision three of section two hundred and ninety-two, such public copy shall be left in the custody of the janitor or some other person in charge of the building, who shall be responsible therefor, and a notice shall be kept publicly posted stating how inspection thereof is to be obtained.

2 Each other inspector shall carefully preserve his register of voters and shall be responsible therefor, until the close of the canvass of the votes on election day, except as hereinafter provided for in cities of the first class.

3 At the close of each day of registration the inspectors shall draw a line in ink immediately below the name of the voter last entered upon each page of each such register. Upon the succeeding day of registration, they shall enter the names of voters in the alphabetical order of the first letter of the surname below the line so drawn upon the proper page after the close of the previous day of registration.

4 Upon the close of the last day of registration, the inspectors shall again carefully compare all the books of registration, to see that they are identical as to their contents, other than as to enrollment entries and numbers, and that the two registers used for party enrollments are identical as to such enrollment entries and numbers, and shall certify as a board in the proper place provided therefor upon each such register that such register is a true and correct register of persons registered by them in such district for the next ensuing election and shall state the whole number of such persons so registered.

*Derivation:* Election Law, § 33, pt. of subd. 2, as amended by L. 1897, ch. 379, § 6, L. 1899, ch. 530, § 10, L. 1901, ch. 95, § 10, L. 1905, ch. 643, § 8.

*Amended by* L. 1915, ch. 678, L. 1919, ch. 304, in effect Oct. 1, 1919.

*Concerning registry lists.*—One who induces or procures a board of registry to conceal the lists of voters and refuses the public access to them is equally guilty with the inspectors of a violation of law. *People v. McKane* (1904), 243 N. Y. 455.

*Filing of registration books.* See Report of Atty.-Gen. (1909), 302.

### § 178. Custody and filing of registers after registration in cities of first class.

1 In cities of the first class, at the close of the last day of registration, the chairman of the board of inspectors shall take from an inspector of opposite political faith from himself, the register of voters made by such inspector, and deliver it to the police, who forthwith shall file the same, if in the city of New York, with the board of elections in the borough of Manhattan, and with the chief clerk of the branch office of the board of elections in each other borough, and if in any other city, with the commissioner of elections. Such registers so filed shall be a part of the records of the offices in which they are filed. The two other inspectors of opposite political faith from each other shall retain their respective registers of voters for use on election day, except as provided in subdivision two of this section.

2 In the city of New York at the close of each day of registration the chairman of the board of inspectors shall take the signature copy of the register of voters and the book of identification statements for registration day and deliver them to the police, for safe keeping in the station house of the police precinct in which the polling place is located. The police shall return the same to the inspector having charge thereof immediately before the hour of the beginning of the next meeting for registration or of the opening of polls on election day. Such inspector shall also be entitled to the possession of such register and book whenever necessary under the provisions of section one hundred and fifty-three of this chapter, and the board of elections shall be entitled to the delivery to it of such register and book upon demand.

3 All registers of voters shall at all reasonable hours be accessible for public examination and making copies thereof, and no charge of any kind shall be made for such examination or for allowing any voter to make a copy thereof. In cities of the first class the public copy of registration shall be used, if necessary, on election day by the inspector whose register was filed by the chairman as herein provided.

*Derivation:* Election Law, § 33, pt. of subd. 2, as amended by L. 1897, ch. 379, § 6, L. 1899, ch. 530, § 10, L. 1901, ch. 95, § 10, L. 1905, ch. 643, § 8.

*Amended by* L. 1917, ch. 793, in effect June 1, 1917.

*Consolidators' note.*—The sentence making it a felony to alter, etc. the public copy of the register is placed in section 184, with other penal provisions.



**§ 179. Certifying changes in registers.**

If, in cities, the board of inspectors shall meet on the second Saturday before the election for the purpose of revising and correcting the register of voters in pursuance of an order of the supreme court, a justice thereof or a county judge, as provided in section one hundred and fifty three of this article, the inspectors shall certify forthwith to the officer with whom the copy of the register is filed the change or changes made upon such register in pursuance of such order. At any revision of registration for an election other than a general election, the quadruplicate register of voters for the last preceding general election shall be furnished to the inspectors of election by the officer or board having the custody thereof, and the inspectors shall certify to the officer or board in cities of the first class with whom the registers are filed the changes, additions or alterations made in such registers for such election.

*Derivation:* Election Law, § 35, pt. of subd. 2, as amended by L. 1897, ch. 379, § 9; L. 1899, ch. 630, § 10; L. 1901, ch. 95, § 10; L. 1905, ch. 643, § 8.

**§ 180. Custody of registers after election.**

At the close of the canvass of the votes of any election, or within twenty-four hours thereafter, all copies of the register of electors used at such election by the inspectors and the public copy thereof, except as otherwise provided in this section, shall be filed with the board of elections of the county in which the election district is located and in the city of New York with the office located in the borough of Manhattan, and with the chief clerk of the branch office of the board of elections in each other borough of the city of New York. In towns, one copy of such register shall be filed by the inspectors with the town clerk and the other copies with the board of elections. It shall be the duty of any such board of elections, and clerk of a branch office in a borough, with whom registers of the election districts are filed as provided in this section, to forthwith file one copy of each such register for each election district, exclusive of copies used for party enrollments, with the state superintendent of elections, but the copy for such superintendent, if made for a district in which personal registration is required and if the poll-book is part of the register, shall be the one containing the signatures of electors made on election day. Registers of electors shall be carefully preserved for use, when needed, at any election or official primary which may be held or ordered in either of such counties or cities, respectively, prior to the next ensuing general election.

*Derivation:* Election Law, § 35, pt. of subd. 2, as amended by L. 1897, ch. 379, § 9; L. 1899, ch. 630, § 10; L. 1901, ch. 95, § 10; L. 1905, ch. 643, § 8.

*Amended by* L. 1911, ch. 649; L. 1916, ch. 678; L. 1918, ch. 323; L. 1919, ch. 604, in effect Oct. 1, 1919.

**§ 181. Certifying number of registered electors.**

At the close of registration on the last day the board of inspectors shall upon blanks furnished by the secretary of state forthwith

certify and file with or mail to the officer or board charged with the duty of furnishing ballots to such district and to the state superintendent of elections the total number of electors registered in such district. The inspectors of each district shall also furnish to the same officials in like manner at the close of each day of registration the total number of electors registered on such day in their respective districts. The chairman of the board of inspectors of election of each district shall also forthwith at the close of each day of registration file with or mail to the state superintendent of elections a certificate showing the total number of voters registered therein in the respective election districts.

**Derivation:** Election Law, § 33, subd. 3, as amended by L. 1899, ch. 630, § 9.

**Amended by** L. 1911, ch. 642; L. 1913, ch. 678, in effect May 22, 1915.

**Forms.**—As to forms of certificates of total number of registered voters, see Forms (part 12, post).

### **§ 182. Delivery of blank books for registration and enrollment; certificates and instructions.**

The secretary of state shall purchase whenever he deems it desirable for the best interests of the state, a suitable number of blank books for registration and enrollment of voters, and known as registers, in the forms respectively provided in sections one hundred and fifty-five and one hundred and fifty-six, with blank certificates and declarations described in sections twelve, thirteen, one hundred and seventy-six, and one hundred and seventy-seven, and brief instructions for registering and enrolling the names of voters and for recording the vote in registers for use outside of a city of one million inhabitants, attached to such books, at least four of such books, with the attached blanks and instructions, for each board of inspectors in the state, and such number of extra copies thereof as in his judgment may be necessary for each county or city to replace lost or damaged registers before delivery to the inspectors. Such register of voters shall have the leaves thereof indexed with the letters of the alphabet, beginning with the letter "A" for the first leaf, and so on. At least twenty days prior to the first day of registration for a general election in each year, the secretary of state shall transmit a sufficient number of such registers, certificates, declarations and instructions to the board of elections of each county, and to the board of elections of the city of New York located in the borough of Manhattan, and to the chief clerk of the branch office of the board of elections in each other borough within the city of New York, for the use of each



board of inspectors within such counties and boroughs, respectively. The board of elections of each county, outside the city of New York, shall deliver such books to the town clerks of each town and to the city clerk of each city in the county, by mail or otherwise, at least five days prior to the first day of registration, and such town clerks and city clerks, and the said board of elections and chief clerks of branch offices of the board of elections in the city of New York, shall deliver such books to the inspectors of said towns, cities and boroughs, respectively, before the hour set for registering the names of voters on the first day of registration. On each day of registration the board of elections of the city of New York and of each county shall furnish to each board of inspectors in each such county or city, respectively, the blanks for the list of voters provided for in section one hundred and fifty-seven of this article. Such blanks shall be distributed in time and manner as above provided for the distribution of registers.

*Derivation:* Election Law, § 36, subd. 1, as amended by L. 1897, ch. 379, § 10; L. 1901, ch. 95, § 11; L. 1905, ch. 643, § 9.

*Amended by* L. 1916, ch. 537; L. 1919, ch. 504, in effect Oct. 1, 1919.

*Certificate of independent nomination of ward officers.*—The provision of this section requiring one hundred electors to join in making a certificate for the independent nomination of ward officers in a city is not so unreasonable as to justify the court in declaring it unconstitutional. *Matter of Independent Certificate (Aldermen of Cohoes)* (1912), 78 Misc. 87.

**§ 182-a. Special instructions to voters to be prepared for the year nineteen hundred and fourteen.**

*Added by* L. 1914, ch. 243. *Repealed by* L. 1918, ch. 323, in effect Apr. 24, 1918.

**§ 183. Delivery of previous registers to inspectors.**

Each town clerk with whom registers of the last preceding general election in any election district, elsewhere than in a city or wholly within a village having five thousand inhabitants or more, shall have been filed, shall cause a copy of such register, used by a poll-clerk at such election for the entries provided for in section three hundred and fifty-five, to be delivered to the board of inspectors of such district at the opening of its first meeting for the registration for any election.

If a new election district shall have been formed in a town since such general election, the board of elections of the county in which such town is located shall, before the first meeting for registration thereafter in such new election district, make a certified copy of each register for such general election of each election district out of which such new district shall have been formed, and shall cause such certified copy to be delivered to the board of inspectors of such new election district at the open-

ing of such meeting for registration. Such board of inspectors, at such meeting, shall place upon the register of voters all persons whose names are upon such copies who are qualified to vote in such election district at the election for which such meeting is held, except the names of persons who are required to personally appear for registration.

If a new election district shall have been formed in a city since such general election, the clerk or board with whom the register of voters for such last preceding general election shall have been filed shall, before the meeting of the inspectors of election of such new district for registration for any other election, make a certified copy of each register of voters for such last preceding general election of each election district out of which such new election district is formed, and the inspectors of such new election district shall, at such meeting for registration for such election, place upon the register of voters the names of all persons upon such copies who are qualified to vote in such election district at the election for which such meeting is held.

Derivation: Election Law, § 36, subd. 2.

Amended by L. 1918, ch. 323; L. 1919, ch. 504, in effect Oct. 1, 1919.

#### § 184. Penalties.

Any applicant for registration, inspector or other person who shall incorporate or cause to be incorporated any false statement in any challenge or other affidavit required for or made or filed in connection with registration or voting, shall be deemed guilty of perjury. Except as provided in this article any person who shall wilfully suppress, alter, destroy or mutilate any signed challenge or other affidavit or official copy thereof shall be deemed guilty of a felony. Any person knowingly taking a false oath before the board of inspectors shall upon conviction thereof be punished as for wilful and corrupt perjury. Any person who shall alter, mutilate, destroy or remove from the place of registration the public copy of registration shall be guilty of a felony, and shall be punished upon conviction thereof by imprisonment in a state prison for not less than two nor more than five years, unless otherwise provided by law.

Any person who signs and mails or delivers to the custodian of primary records an enrollment blank as provided in this chapter, which shall be false in any respect or with intent to mislead, or

any person who induces or attempts to induce any person so to do, is guilty of a misdemeanor. The fact that such statement is untrue shall be prima facie proof that it is false and intended to mislead.

Any person who shall make, sign, file or cause to be filed, certify or attest any false application for registration as required by sections one hundred and fifty-eight and one hundred and fifty-nine of this chapter, or any person who shall alter, mutilate, destroy or remove any such application from the place of registration, shall be guilty of a felony and shall be punished upon conviction thereof by imprisonment in a state prison for not less than two years nor more than five years, unless otherwise provided by law.

Derivation: Election Law, § 34, pt. of subd. 6, as amended by L. 1899, ch. 630, § 8; L. 1901, ch. 544, § 1; also § 34, subd. 9; also § 35, pt. of subd. 2, as amended by L. 1897, ch. 379, § 9; L. 1899, ch. 630, § 10; L. 1901, ch. 93, § 10; L. 1906, ch. 643, § 8.

Amended by L. 1913, chs. 587, 820; L. 1918, ch. 323, in effect Apr. 24, 1918.

## ARTICLE 7.

## BOARDS OF ELECTIONS.

**Section 190. Boards of elections established.**

191. Appointment, term and qualifications of commissioners of elections.
192. Organization of board; rules and reports.
193. Salaries of commissioners of elections.
194. Recommendations for appointment of commissioners of elections.
195. Filling vacancies in board.
196. Bi-partisan character of board.
197. Appointment of employees.
198. General office and branches.
199. Duty of police to aid board of elections.
200. Expenses of board of elections.
201. Disposition of registers and unused ballots.
202. Custodian of primary records.
203. Official seal.
204. Filing statement of canvass, tally sheets and poll-books.
205. Notices.
206. Transfer of records; devolution and continuance of powers.
207. Office hours, rules and regulations of board of elections.
208. All records to be public; records of transactions of the board of elections.
209. Board and members may issue subpoenas.
- 209-a. Article not applicable to Oneida, Broome and Westchester counties; powers and duties of county clerks in such counties defined.

**§ 190. Boards of elections established.**

There shall be a board of elections in every city of the first class in this state which does, or shall contain within its boundaries more than one county, to consist of four persons. There shall be a board of elections in each of the other counties of the state, but in counties having a population of less than one hundred and twenty thousand inhabitants such boards shall consist of two persons. In other counties of the state such board shall consist of two or four members as the board of supervisors of the county may by resolution determine. In every such other county where four commissioners of election have been appointed and the number of said commissioners is reduced to two, the board of supervisors shall within sixty days after this amendment takes effect reduce the number of commissioners to two by designating the two who are to continue, and from the time of such designation the offices of the others shall be deemed abolished. Except in the city of New York the salaries of such commissioners and their expenditures for clerk hire shall be fixed by the board of supervisors of each county, but shall not exceed the following amounts: In each county having a population of less than ninety thousand and which does not contain within its boundaries at least three cities of the third class the salary of a commissioner shall not exceed fifteen hundred dollars, and the expenditure for clerk hire, including stenographer, each year, shall not exceed two thousand dollars. In each county having a population of less than ninety thousand and containing within its boundaries at least three cities of the third class in each county having a population of ninety thousand and less than one hundred and twenty thousand the salary of a commissioner shall not exceed twenty five hundred dollars, and the expenditure for clerk hire, including stenographer, each year, shall not exceed thirty five hundred dollars each year. In each county having a population of one hundred and twenty thousand and less than five hundred thousand the salary of a commissioner shall not exceed three thousand dollars, and the expenditure for clerk hire, including stenographer each year, shall not exceed five thousand dollars. In each county having a population of five hundred thousand and less than a million the salary of a commissioner shall not exceed three thousand dollars. The population of the various counties of the state referred to in this section shall be fixed and determined according to the latest preceding federal census, or state enumeration. Not more than two of such com-

members, if the board of elections consist of four members, and not more than one of such commissioners if said board consist of two members, shall belong to the same political party or be of the same political opinion on state or national politics. The persons composing such boards of elections shall be designated "commissioners of elections." Each of the said boards of elections shall be and is hereby charged with the duty of executing the laws relating to all elections held within their respective cities or counties, except as otherwise provided by law.

Derivation: Election Law, § 11, subd. 2, § 8, as added by L. 1901, ch. 95, § 2.

Amended by L. 1911, chs. 649 and 740; L. 1912, ch. 406, \* L. 1913, chs. 809 and 820; L. 1919, ch. 362, in effect May 3, 1919.

The purpose of sections 190-196 of the Election Law is to provide for a partisan election board in New York city, and the mayor is given full authority to appoint the board. *Matter of Kane v. Gaynor* (1911), 141 App. Div. 156, aff'd 202 N. Y. 615, on opinion of Burr, J., below.

While the powers and duties of a board of elections are ministerial only, jurisdictional defects are not waived by the receipt and filing of a certificate of independent nomination, and if said certificate be not substantially in the form and executed and authenticated in the manner required by law it is invalid and remains invalid, although it may have been received and filed by the board. *Matter of Murphy* (1919), 189 App. Div. 135, 178 N. Y. Supp. 236.

The duties of the board of elections with respect to the receiving and filing of certificates of independent nomination are now wholly ministerial. The duty of executing the election laws, however, is expressly enjoined upon said board by § 190, as amended by L. of 1919, ch. 362, and it is its duty to refrain from acting upon papers purporting to be certificates of nomination, which do not appear on the face thereof to be executed in the form and manner required by law, but it has no judicial power to investigate or decide with respect to the validity of such a certificate depending on matters dehors the record. The former rule that all certificates of nomination to which no objection is filed are to be deemed valid, no longer obtains. *Matter of McGrath* (1919), 189 App. Div. 110, 178 N. Y. Supp. 231.

The duty of counting the number of signers of an independent certificate of nomination who have registered devolves upon the board of elections under § 193, as amended by L. 1919, ch. 362. This is a ministerial duty and is subject to judicial review under § 123, as amended by L. 1914, ch. 244. *Matter of Murphy* (1919), 189 App. Div. 135, 178 N. Y. Supp. 236.

Upon an appeal by a candidate from an order denying his application to have his name printed on the official ballot, no objection having been filed to his certificate of independent nomination, no objection depending upon extrinsic matters the record is available, but said candidate is not entitled, regardless of the validity of the certificate on the face of the records and of whether the requisite number of the nominators have registered, to have his name printed on the official ballot. *Matter of Murphy* (1919), 189 App. Div. 135, 178 N. Y. Supp. 236.

Upon an application by a candidate for an order directing the board of elections to cause his name to be printed on the official ballot, held that for the reasons stated in the opinion of *Matter of McGrath* (189 App. Div. 110), the applicant was not entitled to the order without showing that the certificate of nomination was in due form and duly executed and on said ground an order denying his application might be affirmed without prejudice.

\* Reducing Number of Commissioners.—L. 1912, ch. 406, section 4 in effect April 16, 1912, although not amending any section of the Election Law, provides as follows: "In any county in which the number of the commissioners constituting the board of elections is reduced by the provisions of this act, the board of supervisors shall, within thirty days after the act takes effect designate the two members of such board of opposite political faith who shall retire therefrom. Upon the adoption of a resolution to that effect, the terms of office of such retiring members shall cease and determine and the remaining members shall thereafter constitute, until the expiration of their terms, the board of elections of such county."



to another application on sufficient papers; but in view of the limited time before it becomes necessary to have the ballots printed, said application should not be scrutinized technically and the court should have entertained it and summarily decided whether the certificate was valid and sufficient on its face and on matters of record. *Matter of Murphy* (1919), 189 App. Div. 135, 178 N. Y. Supp. 236.

The authority of the board of elections with respect to certificates of independent nomination is wholly ministerial and it has no power to go outside of, beyond or behind the records, and is not authorized to pass upon any question relating to the forgery of the name of any nominator, notary or subscribing witness, and where no objection to this certificate is filed, the court is confined to matters of record. *Matter of Murphy* (1919), 189 App. Div. 135, 178 N. Y. Supp. 236.

A board of supervisors has no power under subd. 5 of § 12 of the County Law to increase the compensation of commissioners of election beyond the limitation fixed by this section of the Election Law. *Opinion of Attorney General* (1919), 19 State Dept. Rep. 317.

Jurisdiction of a board of elections held limited to the examination of the face of a certificate of independent nomination and to counting the names of the nominators who registered, and held further that in so far as a letter of said board indicates that it went beyond said jurisdiction, its action was null and void. *Matter of McGrath* (1910), 189 App. Div. 140, 178 N. Y. Supp. 231.

**Salary of Clerk.** Under § 12, subd. 5 of the County Law, as amended by L. 1914, ch. 358, the board of supervisors has power to fix the salary of the chief clerk of the board of elections. *People ex rel. Simpson v. Sayder* (1916), 173 App. Div. 171, 158 N. Y. Supp. 937.

### § 191. Appointment, term and qualifications of commissioners of elections.

All commissioners of elections shall be appointed by the board of supervisors of the county in which such board of elections is located and in the city of New York by the board of aldermen of such city. The supervisors of each county and the members of the board of aldermen of the city of New York shall appoint the commissioners of elections for their respective counties and the city of New York. Such appointment shall be evidenced by the supervisors of each county or the board of aldermen of the city of New York making such appointments, executing a certificate substantially as follows:

"We, the undersigned, comprising the supervisors of \_\_\_\_\_ county, (the members of the board of aldermen of the city of New York) do hereby, pursuant to the election law, appoint \_\_\_\_\_, residing at \_\_\_\_\_, a commissioner of elections for said county.

"In witness whereof we have hereto subscribed our names and the towns or wards (aldermanic districts) we represent, this \_\_\_\_\_ day of \_\_\_\_\_, 19...."

and shall acknowledge said certificate. Said certificate shall thereupon be filed in the office of the county clerk of said county and said county clerk shall immediately upon such filing notify the secretary of state of such appointments. All such appointments shall be for the full term of two years, beginning at twelve o'clock noon of January first in each odd numbered year.

Each of the said commissioners of elections shall be at the time of his appointment a resident and an elector of the political subdivision for which he is appointed. A commissioner of elections may, while holding such office, hold one of the following offices: Notary public, commissioner of deeds, police justice of a village, trustee or officer of a common or union school district outside of a city, justice of the peace of a town, and any other office filled by election or appointment within or for a town or village, or district or subdivision of either, except supervisor, town clerk, inspector of election, poll clerk or ballot clerk. Such commissioner shall not hold, while he is commissioner, any other office, except as above provided; nor shall he be a candidate, while he is commissioner, for any elective office which he would not be entitled to hold under the provisions of this section, nor after he has ceased, by resignation or otherwise, to be commissioner, if the election shall occur within fifty days therefrom, and any votes cast for any person



for any such office who shall have been a commissioner of elections within fifty days of the election at which such votes were cast shall be void and shall not be counted, except that such commissioner may be a candidate for the office of supervisor or town clerk while he is a commissioner, and at any time thereafter, subject to the ensuing provisions of this section. Any votes cast for a person for either of such offices who shall have been a commissioner of elections, and who shall have resigned from or otherwise ceased to hold the office of commissioner at least fifteen days before the election at which such votes were cast shall be valid and shall be counted.

A commissioner of elections may be removed from office by the governor for cause in the same manner as a sheriff. Any vacancy in the office of commissioner of elections shall be filled by the supervisors of such county or in the city of New York by the members of the board of aldermen within five days after the filing of the certificate provided for in section one hundred and ninety-five of this act, and the person appointed to fill such vacancy shall hold office during the remainder of the term of the commissioner in whose place he was appointed.

**Derivation:** Election Law, § 11, subd. 2, pt. of paragraph b, as added by L. 1901, ch. 95, § 5.

**Amended by** L. 1911, ch. 649, and L. 1913, ch. 820, in effect Dec. 17, 1913.

**Cross-reference.**—As to appointment, qualifications, etc., of election officers in general, see Election Law, § 302.

**Action of board of supervisors administrative, not judicial.**—Where two parties, each claiming to be chairman of a Republican county committee, certify a candidate for appointment as commissioner of elections, pursuant to section 184, the board of supervisors in passing upon both designations, which are regular in form, and in appointing one of said candidates, acts in a purely administrative and not judicial capacity, and, hence, certiorari to which the person holding the office has not been made a party is not a proper remedy to review the appointment. If the appointee is to be ousted from office, it must be through a direct action to which he is a party. The title to a public office should not be questioned collaterally and can only be determined in an action in the nature of quo warranto, which remedy is exclusive. It cannot be assumed that the Attorney-General will refuse to bring an action of quo warranto thereby leaving the petitioners without a remedy. A writ of certiorari will only lie for the review of determinations of judicial tribunals and of other tribunals when engaged in the exercise of powers of a judicial nature. *Matter of Carp* (1917), 179 App. Div. 387, 166 N. Y. Supp. 243.

**Election commissioner; illegal appointment.**—Where a person was certified by the county committee of his party for the office of election commissioner, but the board of supervisors disregarding the certificate appointed another person to the office, the person certified, not having title to the office, may not maintain an action as relator to oust the occupant. Until a person is legally appointed and the occupant refuses to surrender the office the Attorney-General in the exercise of his discretion should not bring an action to oust the occupant. *Rept. of Atty.-Gen.* (1913), Vol. 2, p. 616.

**Vacancies.**—Where the present residence or whereabouts of a commissioner of elections is unknown and he has for a long time been absent from the county for which he was appointed and he does not attempt to exercise any of the powers of his office, a vacancy exists which may be filled by the appointing power without recourse to any action at law to determine his status. *Rept. of Atty.-Gen.* (1914), Vol. 2, p. 131.

### § 192. Organization of board; rules and reports.

At their first meeting the commissioners of elections shall organize as a board by electing one of their number as president and one as secretary, and in case no election can be had the members shall draw lots for such places. The president and secretary shall not belong to the same party. The board shall have power to adopt such rules and regulations for the control and conduct of the affairs of such board and of its employees as are not inconsistent with or in violation of law. The board shall keep a record of its proceedings and shall make an annual report in the month of January of the affairs and proceedings of said board to the secretary of state. The board of elections of a county outside of the city of New York shall also make an annual report in the month of January, of its affairs and proceedings, to the board of supervisors. The board shall append to the report to the secretary of state a statement of the number of voters enrolled with each party for that year in each election district. The board shall also collect such data as may be available relating to the expense connected with registrations, enrollments and elections within its county or city each year and include a statement thereof in such report to the secretary of state, together with such other information relating to elections as the secretary of state may prescribe.

**Derivation:** Election Law, § 11, subd. 2, pt. of ¶ b, as added by L. 1931, ch. 46, § 5.

**Amended by** L. 1911, ch. 649; L. 1917, ch. 703, in effect June 1, 1917.

### § 193. Salaries of commissioners of elections.

The salary of each commissioner of elections in the city of New York shall be six thousand dollars a year, payable in equal monthly installments. The salaries of all other commissioners of elections shall be fixed by the board of supervisors appointing said commissioners and may be changed from time to time by resolution of the said board of supervisors, but shall not exceed the amount specified in section one hundred and ninety.

**Derivation:** Election Law, § 11, subd. 2, pt. of ¶ c, as added by L. 1901, ch. 16, § 5.

**Amended by** L. 1911, ch. 649; L. 1912, ch. 406, § 2; L. 1913, ch. 800; L. 1917, ch. 703, in effect June 1, 1917.

**Consolidators' note.**—Election Law, § 11, subd. 2, ¶ c. Heading new. The old paragraph required the mayor to appoint commissioners within ten days after the act took effect, to hold office until noon of January 1, 1903 and to again appoint "upon the expiration of the term of office of the commissioners first appointed and every two years thereafter." The new section defines the term of office generally by referring to "each odd numbered year," also omitting the matter relating to the qualifications of the first board, which was merely a duplication of the general provision retained.

**Designation of newspapers.**—Aldermen of the city of New York and not the board of elections are empowered to designate newspapers to publish notices. *Standard Publishing Co. v. City of New York* (1906), 111 App. Div. 269, 97 N. Y. Supp. 740.

**§ 194. Recommendations for appointment of commissioners of elections.**

Within ten days after this act takes effect and at least five days before the first day of January in each odd numbered year, the respective chairmen of the county committees within the counties of New York and Kings and the respective chairmen of the county committees of all the other counties in the state excepting the counties of Bronx, Queens and Richmond of each of the two political parties which at the general election last preceding the date of such certificate cast the highest and the next highest number of votes for governor, shall each respectively make and file or cause to be filed in the case of the counties of New York and Kings with the board of aldermen of the city of New York, and in the case of each of the other counties with the board of supervisors of such county a certificate in substantially the following form, each of which certificates shall certify the name of a person who is a resident and qualified voter in the case of the counties of New York and Kings of the city of New York, or in the case of the other counties a resident of such county, and who is recommended as a fit and proper person to be appointed a commissioner of elections:

" I, ....., chairman of the county committee of the ..... party, for the county of ....., do hereby, in accordance with the provisions of section one hundred and ninety-four of the election law, certify that in the opinion of a majority of the said committee, pursuant to resolution duly adopted, ..... a resident and qualified elector of the borough of ..... city of New York, or of the county of ....., is a fit and proper person to be appointed a commissioner of elections, and I do hereby recommend him for appointment to said office. In witness whereof, I have made and executed this certificate, this ..... day of ....., 19.."

Each of such certificates shall be duly acknowledged by the person executing the same, before a notary public or other officer authorized to take acknowledgments to deeds for record in this state.

Derivation: Election Law, § 11, subd. 2, pt. of § d, as added by L. 1901, ch. 92, § 5

Amended by L. 1911, ch. 642, and L. 1913, ch. 820, in effect Dec. 17, 1913

Consolidators' note. — As in section 193 the obsolete provisions governing the making of nominations to the mayor for the original board are omitted and the general provision retained is defined by reference to "each odd numbered year." The form of certificate making the nomination is also made a part of the general provision and its place in the section changed accordingly.

Application of section. *People ex rel. Woods v. Flynn* (1913) 81 Misc. 279.

Effect of nominations. — The mayor of the city of New York in appointing a commissioner of elections cannot be confined to a single person, nominated under the provisions of this section. *Matter of Kane* (1911), 71 Misc. 161.

A provision of the legislature for nominations to the office of commissioner of elections, which contemplates the nomination of a single candidate only and thus destroys the power of selection of the appointing power, is in contravention of section 2 of article X of the State Constitution, which requires offices to be filled either by the electors or by some public officer or board. *Matter of Kane* (1911), 71 Misc. 163.

When the only exercise by the legislature of the power to direct the nomination for such appointment is a provision by which a single candidate only is nominated and the mayor's power of selection is, therefore, destroyed, the mayor may appoint such commissioner without regard to such nomination. *Matter of Kane* (1911), 71 Misc. 163.

The purpose of section 194 is to make provision for pointing out to the mayor persons who are eligible so that there may be no pretext for violating the bi-partisan plan of the statute. *Matter of Kane v. Gaynor* (1911), 144 App. Div. 196, aff'd 202 N. Y. 615, on opinion of Burr, J., below.

The power given to the mayor by section 193 to "appoint four persons as commissioners," each of whom shall be a resident and qualified voter of New York city and not more than two of whom shall be of the same political opinion, is not curtailed in any way by this section providing that the respective chairmen of the county committees of New York and Kings counties of each of the two principal political parties shall make and file with the mayor a certificate in a stated form certifying the name of one who is recommended as a fit and proper person to be appointed commissioner. *Matter of Kane v. Gaynor* (1911), 144 App. Div. 196, aff'd 202 N. Y. 615, on opinion of Burr, J., below.

**Secretary of county committee not a party in a mandamus proceeding.**—Where a Democratic county committee has duly certified from time to time various persons to be appointed to the office of election commissioner, and each of said persons has in regular order been rejected by said board, the secretary of said committee is not a party legally interested in the appointment of any one of said persons as election commissioner, so as to entitle him to apply for a writ of mandamus to compel said board to appoint one of the persons selected. *People ex rel. Mullarkey v. Board of Supervisors* (1917), 180 App. Div. 126, 167 N. Y. Supp. 323.

#### § 195. Filling vacancies in board.

If at any time a vacancy arises in the office of commissioner of elections, through death, resignation, removal or inability to serve, the chairman of the county committee of the political party to which the commissioner creating such vacancy belonged, and if such vacancy arise in the office of commissioner of elections for New York city and if the commissioner creating such vacancy was a resident of the borough of Manhattan or of the borough of the Bronx borough of said city, the chairman of the county committee of Kings county of the political party to which the commissioner creating such vacancy belonged, and if the commissioner creating such vacancy was a resident of any other borough of said city, the chairman of the county committee of Kings county of the political party to which the commissioner creating such vacancy belonged, shall make and file or cause to be filed with the board of supervisors of the county in which such vacancy arises or if such vacancy arise in the board of elections of New York city, then with the board of aldermen, a certificate in substantially the form and executed and acknowledged as above provided, certifying and recommending the name of a person who is a resident and qualified voter of such county or city wherein such vacancy arises, as a fit and proper person to be appointed a commissioner of elections for the unexpired term of the commissioner creating such vacancy.

Derivation: Election Law, § 11, subd. 2, pt. of par. d, as added by L. 1901, ch. 95 § 3.

Amended by L. 1911, ch. 649. In effect July 13, 1911.

#### § 196 Bi-partisan character of board.

Each and every certificate filed with the board of supervisors or the board of aldermen in pursuance of the provisions of this article, shall be

kept by the board with which the same is filed in some safe and secure place in the office of the clerk of said board, and shall be a public record open at all reasonable hours to the inspection of any person who may desire to see the same it being the intention of this article, and said intention is hereby declared, to secure in the appointment of the members of the board of elections established by this article, and the employees thereof, equal representation of the two political parties which at the general election next preceding such appointment cast the highest and the next highest number of votes for governor, and of which the committees and chairmen of committees have been duly elected as such under and in pursuance of the provisions of article three of this chapter relating to primary elections.

Derivation: Election Law, § 11, subd. 2, par. c, as added by L. 1901, ch. 95, § 5

Amended by L. 1911, ch. 649, and L. 1913, ch. 820, in effect Dec. 17, 1913.

### § 197. Appointment of employees.

Every board of elections shall have power to fix the number, salaries, duties and rank of its chief clerks, clerks, assistant clerks and stenographers and to appoint and remove at pleasure and to fix the salaries of all employees of said board but not in excess of the amounts specified in section one hundred and ninety, except that in a county having a population of less than ninety thousand the board may have one clerk only and his salary shall not exceed nine hundred dollars per annum, nor shall the aggregate expenditure for such clerk hire and for stenographer exceed the amount specified in section one hundred and ninety.

Derivation: Election Law, § 11, subd. 2, pt. of § h, as added by L. 1901, ch. 95, § 5

Amended by L. 1911, ch. 649; L. 1912, ch. 408; L. 1913, chs. 800 and 820, in effect Dec. 17, 1913.

Salary of clerk.—The board of supervisors, under § 12, subd. 5, of the County Law, as amended by L. 1914, ch. 368, has power to fix the salary of the clerk notwithstanding the provisions of this section. *People ex rel. Simpson v. Snyder* (1916), 173 App. Div. 171, 158 N. Y. Supp. 837.

### § 198. General office and branches.

The board of elections in the city of New York shall have power to provide and maintain an office for such board in the borough of Manhattan which shall be the headquarters of said board, and to furnish the same with necessary furniture and office fixtures, and shall also provide, maintain and furnish an office in each other borough of the city of New York and shall place the same in the charge of a competent person. Said board of elections shall have full and complete control of the said branch offices of the board of elections and of all the offices, employees, affairs and administration of said branch offices.

In each county the board of supervisors or other body or official charged with the duty of providing public offices shall provide the said board of elections for said county with proper and suitable offices. The expenses for said offices shall be a part of the expenses of said board of elections.

Derivation: Election Law, § 11, subd. 2, pt. of § i, as added by L. 1901, ch. 95, § 5

Amended by L. 1911, ch. 649. In effect July 13, 1911.

Consolidators' note.—The provisions covering the temporary location of offices of the new board, and the turning over of the records of the old police bureau attached by the act, are omitted, as obsolete. The remainder of the paragraph has been made section 199.



**§ 199. Duty of police to aid board of elections.**

It shall be the duty of the commissioner of police and the officers and members of the police force, whenever called upon by the board of elections, to render to said board all practicable assistance in the enforcement of this chapter, including the use of the police telephone service. The commissioner of police shall detail to the service of the board of elections upon its written request such patrolmen and other members of the police force as may be necessary from time to time for the faithful performance by said board of its functions and duties. All copies of police reports to commanding officers of precincts under section one hundred and fifty-seven of this chapter, shall be forthwith transmitted by the precinct commander to the board of elections. All statements of canvass delivered to any officer in command of a precinct under section three hundred and seventy-two of this chapter shall be forthwith transmitted by such precinct commander to the board of elections to be by them preserved with the same force and effect as if preserved by the police.

Derivation: Election Law, § 11, subd. 2, pt. of ¶ 1, as added by L. 1901, ch. 96, § 5.

**§ 200. Expenses of board of elections.**

All sums necessary to pay the expenses of the board of elections of the city of New York, including the salaries of the commissioners of elections, chief clerks, clerks, assistant clerks and other employees, and to meet and defray the charges and expenses of all elections lawfully held in the city of New York or in any territory included therein, shall be a charge against the said city, and shall upon proper certificates and vouchers be paid in the same manner as other expenses and charges against the said city are by law provided to be paid. Said charges and expenses, as estimated, shall be included in the annual budget of said city each year and in the yearly taxes levied upon the estates, real and personal, in the city of New York.

The board of elections in each county, excepting those counties comprising the city of New York, shall on or before the fifteenth day of December in each year certify to the clerk of the board of supervisors creating said board of elections the total amount of the expenses of said board of elections, including salaries, for the preceding year, and, if the board of supervisors of any county shall so direct, shall certify to said clerk the portions of said expenses which under provisions of law are to be borne by any city or cities in said county and the portion thereof which is to be borne by the rest of said county, and the said clerk of the board of supervisors shall thereupon notify the proper local official or



officials, who in spreading upon the assessment-rolls the taxes to be levied upon the taxable property in the city, or any of the said cities, and in the rest of the county, shall include in the amount so spread the amounts certified by the said board of elections to be borne by the said city or cities, respectively, and in the amount spread upon the assessment-rolls of the taxable property in the several towns or other political subdivisions of the rest of the county the amount so certified by said board of elections to be borne by the said towns or political subdivisions respectively.

*Derivation:* Election Law, § 11, subd. 2, pt. of ¶ j, as added by L. 1901, ch. 95, § 5.

*Amended by* L. 1911, ch. 649. In effect July 13, 1911.

*Consolidators' note.*—The provisions directing the city comptroller to turn over to the new board the appropriation of the year 1901, and for further financing the new board in that year are omitted, being obsolete.

### § 201. Disposition of registers and unused ballots.

The board of elections of the city of New York is hereby authorized and directed, not less than two years after each election, to sell or destroy all registers of voters in the possession of such board; provided, that the signature copy of such register of voters for each election district shall be excepted and preserved by such board from such sale or destruction. The board of elections is also authorized to sell to the highest bidder the unused ballots furnished for the last preceding election, but such unused ballots shall not be sold until at least six months after the election for which they were provided. All moneys realized by sales under this section shall be paid over to the proper fiscal officer of the city of New York to the credit of the account of the board of elections.

*Derivation:* Election Law, § 11, subd. 2, paragraph k, as added by L. 1901, ch. 95, § 5.

*Amended by* L. 1918, ch. 323, in effect Apr. 24, 1918.

### § 202. Custodian of primary records.

The board of elections shall be the custodian of primary records for each political subdivision for which such board is appointed. The board of elections for New York city shall also be the custodian of primary records for the several counties in said city.

*Added by* L. 1911, ch. 649. In effect July 13, 1911.

### § 203. Official seal.

Each board of elections is hereby authorized to adopt an official seal which shall be provided at the expense of the city or county for which said board of elections is appointed, and shall cause a description of said seal with impressions from it to be filed in

the office of the county clerk of said county and of the secretary of state. Such description of the official seal of the board of elections of New York city shall be filed in the office of the county clerk of each county in said city.

Added by L. 1911, ch. 649. In effect July 13, 1911.

#### § 204. Filing statement of canvass, tally sheets and poll-books.

All statements of canvass, tally sheets and poll-books, void and protested ballots, and any and all other packages and documents required by law to be filed by the inspectors, except certified copies of statements of canvass, ballot lists and tally sheets which are required by law to be filed with the county clerk shall be filed with the board of elections of said county or, in the city of New York, with the board of elections of said city. In the city of New York the said statements, documents and packages shall be filed in the branch office in each borough.

Added by L. 1911, ch. 649. In effect July 13, 1911.

#### § 205. Notices.

All notices of elections to which this chapter applies which are required by law to be published, advertised or posted in any county or any political subdivision thereof or therein shall be published, advertised or posted by the custodian of primary records of said county or of the city of New York. In the counties of Queens and Richmond, the board of elections of the city of New York shall designate two newspapers, representing respectively each of the two principal political parties into which the electors of the county are divided, in which shall be published the election notices issued by the secretary of state, and the official canvass, and fix the compensation therefor, which shall be a county charge.

Added by L. 1911, ch. 649; amended by L. 1919, ch. 503, in effect May 9, 1919.

Notice of local option election.—It was the plain legislative intent, when the election law was amended creating boards of election in each county, to transfer to such boards the management and control of elections in their respective counties and all political subdivisions thereof, including the submission of all propositions which were to be voted on at general elections, and where notices of local option questions under § 13 of the liquor tax law were

published and posted by the board of elections for a local option election which was held in connection with the general election the publication is a valid one. *Matter of Town of Bath* (1916), 93 Misc. 576.

The provisions relating to the submission to the electors of a town of the question of local option cast upon the custodian of primary records the duty of giving the public notice of the impending submission. Hence, where he did not perform said duty, and the notices were published by the town clerk acting upon his own initiative, there was not a valid submission, and a resubmission of the question will be ordered. The provisions of the statute *above* said are mandatory and may not be disregarded. *Matter of Peters v. Sisson* (1918), 183 App. Div. 286, 171 N. Y. Supp. 62.

There being no commissioner of elections in the county of Genesee, the duty of posting and publishing the notices preliminary to the submission of the four *various* questions specified in § 13 of the liquor tax law rests upon the town clerk, and the petition of certain taxpayers of the town of Byron, in said county, for an order directing the resubmission of said questions which had been originally submitted on November 6, 1917, at the general election with which the town meeting was merged, on the ground that the posting and the publishing of notices were made or procured to be made by the town clerk and by him only, will be denied. *Matter of Cook* (1918), 104 Misc. 196, 171 N. Y. Supp. 756.

### § 206. Transfer and custody of records; devolution and continuance of powers.

All books, documents, papers, records and election appliances or appurtenances now or heretofore held or used by or under the control of any officer or officers of any county or of any political subdivision thereof or therein, relating to or used in the conduct of general, special or primary elections, shall be transferred to or continue in the care, custody and control of the board of elections; and the said board of elections in any such county shall continue to be charged with the duty of performing each, every and all of the duties of the county clerk or commissioner of elections of said county, relating to elections heretofore devolved upon such board by the former provisions of this section, except as otherwise provided in this chapter. In the city of New York the board of elections shall continue to exercise the same powers and duties now exercised by it, excepting as otherwise provided in this chapter. All books, documents, papers, records and election appliances held or used by any commissioner or commissioners of election, in any county whose powers and duties have been heretofore terminated shall continue in the custody of the board of elections for such county.

Added by L. 1911, ch. 649; and amended by L. 1916, ch. 537, in effect May 25, 1916.

**§ 207. Office hours, rules and regulations of board of elections.**

The offices of each board of elections shall be public and open during every business day of the year. The board of elections in each county shall designate the hours when said offices shall open and close. Each board of elections may adopt its own rules and regulations for the transactions of its business.

Added by L. 1911, ch. 649, in effect July 13, 1911.

**§ 208. All records to be public; records of transactions of the board of elections.**

All the records in the office of the board of elections shall be public and open for inspection by any citizen of the State of New York during the hours when the said office shall be open, and the said board of elections shall provide ample and sufficient facilities for keeping said records and making copies of the same.

Each board of elections shall keep a record of its proceedings, which shall be public and transcribed in a book or books within twenty-four hours after the adjournment of said board. Minutes of all meetings of the board of elections shall show how each commissioner of elections voted upon any resolution or motion proposed at said meeting of the board.

Added by L. 1911, ch. 649, in effect July 13, 1911.

**§ 209. Board and members may issue subpoenas.**

The board of elections and any of the commissions thereof may require any person to attend before the board or a commissioner at the office of the board or a branch office and be examined by the board or a commissioner as to any matter in relation to which the board is charged with a duty under this chapter or concerning violations of this chapter, and may issue a subpoena therefor.

Added by L. 1918, ch. 323, in effect Apr. 24, 1918.

**§ 209-a. Article not applicable to Oneida, Broome and Westchester counties; powers and duties of county clerks in such counties defined.**

After this section takes effect the foregoing provisions of this article shall not apply to the counties of Oneida, Broome and Westchester, excepting section one hundred and ninety-nine. For the purpose of applying such section, the county clerk in each of such counties shall be deemed a board of elections. In each of such

counties, except as otherwise provided in this section, the county clerk shall have therein the powers and duties of a board of elections, as well as those of a county clerk, prescribed by this chapter and other statute, and references to such board shall be deemed to mean and include, with respect to any such county, the county clerk thereof. All books, documents, papers, records and election appliances or appurtenances held or used by or under the control of the board of elections in the county of Oneida, county of Broome, or county of Westchester pursuant to the provisions of this chapter, shall, when this section takes effect, be transferred to the care, custody and control of the respective county clerks of such counties. Each such county clerk may adopt rules and regulations, not inconsistent with the provisions of this chapter, for conducting the business of his office in relation to carrying out the provisions of this chapter. The official papers, records and documents in the office of such county clerk from time to time relating to general, special or primary elections, or in his custody under any provision of this chapter, shall be public and open to inspection by any citizen of the state during office hours. The county clerk of each such county shall be the custodian of primary records of his county. Notwithstanding the provisions of any other statute, either general or local, the board of supervisors of Broome county may from time to time provide by resolution for the appointment by the county clerk of such county of additional assistants, at the expense of the county, in the office of such clerk, and the board of supervisors of Oneida county may in like manner provide for the appointment by the county clerk of Oneida county of two additional deputies representing each of the two political parties which at the last general election preceded such appointment cast the highest and the next highest number of votes for governor and of additional assistants, whenever such board of either county, respectively, shall determine that such deputies or assistants are necessary for the proper performance of the additional duties devolved upon such clerk by this section; but the aggregate compensation of such additional assistant appointed on account of such additional powers and duties in the county of Broome shall not exceed one thousand dollars annually, and of such deputies and assistants in the county of Oneida shall not exceed the amount specified in section one hundred and ninety for commissioners of elections and clerks in counties of the same population as Oneida, but the maximum amount expended to be limited by the board of supervisors.

In the case of Westchester county, the county clerk of said county may appoint one deputy in addition to those authorized under the county law to act generally for and in his place on all election matters under a department hereby created and designated the county election department of the office of the county clerk of Westchester county. He may also appoint one secretary for said department and such other emergency employees as shall be required. The said deputy, secretary and emergency employees shall hold office during the pleasure of said clerk and shall be paid such compensation as the board of supervisors of said county shall fix, the aggregate of which, exclusive of the compensation to be paid the emergency employees, shall not exceed three thousand four hundred dollars.

Added by L. 1916, ch. 454; amended by L. 1920, ch. 192; L. 1921, ch. 656, in effect June 1, 1921.

L. 1921, ch. 656, § 2. The board of elections in the county of Westchester is hereby abolished and the terms of office of the members of such board shall expire and the powers, duties, offices and employment of such members and of the subordinates of such board shall cease and determine when this act takes effect. This act shall not affect any pending matter pertaining to the powers and duties of the board of elections of such county under the election law, nor affect the running of time with respect to any matter or proceeding provided for in such law. Any such pending matter shall be continued and disposed of by the county clerk.

**ARTICLE 7-A.****COMMISSIONER OF ELECTIONS IN THE COUNTY OF MONROE.**

**Section 210. Commissioner of elections for Monroe county.**

**211. Appointment, qualifications and removal of commissioner.**

**212. Appointment, removal and examination of inspectors of election and clerks.**

**213. Office for commissioner.**

**214. Custody of records.**

**215. Employees.**

**216. Notices.**

**217. Filing papers; general powers and duties of commissioner.**

**218. Purchase of supplies, including voting machines; expenses of commissioner.**

**219. Apportionment of expenses.**

**220. Publication of notices.**

**221. Polling places, election districts, et cetera.**

**222. Voting machines.**

**223. Construction of article.**

**§ 210. Commissioner of elections for Monroe county.**

The office of commissioner of elections in the county of Monroe is hereby created, and all the rights, powers, authority, duties and obligations immediately heretofore by law vested in and imposed upon any officer or officers of the county of Monroe or any political subdivision thereof or therein, excepting the appointment, duties and obligations of inspectors of election, poll clerks and ballot clerks, who shall be appointed as hereinafter provided and serve as provided by law with respect to general or special elections and official primaries in the county of Monroe or in any political subdivision thereof or therein, except elections held at a time other than the time of the general election, or of village and school district officers, and special elections for town, village and school district purposes held at such other time, shall, by force of and as an effect of this article, be transferred to and be continued in the commissioner of elections in the county of Monroe hereby created from and after the time of appointment and qualification of the first commissioner hereunder.

**Added by L. 1916, ch. 7, in effect Feb. 21, 1916.**



**§ 211. Appointment, qualifications and removal of commissioner.**

Within five days after this article takes effect the county judge, special county judge and the surrogate of Monroe county, or a majority of them, shall appoint a commissioner of elections who must be a resident voter of such county and shall file in the office of the clerk of such county a certificate of the appointment. Such commissioner of elections shall take the constitutional oath of office and file the same in the county clerk's office and shall hold office for a term of four years; his successor to be appointed in like manner. Such term of office, except as otherwise provided in this section, shall begin on the first day of May in every fourth year, beginning with the year nineteen hundred and twenty. The term of the commissioner first appointed hereunder shall begin on the day the appointment is made and expire on May first, nineteen hundred and twenty. In case of a vacancy in the office of commissioner of elections, such county judge, special county judge and surrogate, or a majority of them, shall appoint a resident voter of Monroe county to fill such vacancy and shall file a certificate of such appointment in the office of the clerk of Monroe county. The person so appointed shall take the constitutional oath of office and serve the remainder of the term. The commissioner of elections appointed pursuant to this article shall be subject to removal by the governor in like manner as sheriffs of counties. Upon the appointment and qualification, pursuant to this section, of the first commissioner for such county, the board of elections therein shall be deemed abolished; and the terms of office of its members shall then expire. The provisions of article seven of this chapter shall not thereafter apply to the county of Monroe except section one hundred and ninety-nine; and the commissioner provided for herein shall be deemed a board of elections for the purpose of applying such section.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

**§ 212. Appointment, removal and examination of inspectors of election and clerks.**

Inspectors of election and general clerks in and for the various election districts in the county of Monroe shall be appointed as follows: The chairmen of the county committees of the two political parties which at the last preceding general election of a

governor cast the highest number of votes for governor shall each file with the commissioner of elections, on or before the first day of April of each year, a list of persons who are duly qualified to serve as inspectors of election and such clerks. The commissioner of elections shall thereafter examine each person whose name appears on such lists as to their qualifications for such offices. Such commissioners shall give each person whose name appears on such lists not less than three days' notice of such examinations. Such notice must be either written or printed and state the date, time and place such examination is to be held and must be sent either by mail or special messenger. Any person receiving the notice shall appear before such commissioner of elections at the place fixed for such examination at the time stated in the notice, and the said commissioner of elections shall examine such person as to his qualifications for the office of inspector of election or clerk, as the case may be. Such examination may be either written or oral or both, and if the person so examined is found by the commissioner to be qualified and is, in the judgment of the commissioner a fit and proper person for such office, the commissioner or some person designated by him shall administer the constitutional oath of office and issue to him a certificate of appointment and he shall serve until his successor is appointed; but if such person is found disqualified or is, in the judgment of the commissioner, not a fit and proper person for such office, his name shall be stricken from the list. A supplemental list of persons for election officers may also be filed containing not more than ten names for each office. Additional supplemental lists for any election district may be filed at any time before the appointments for such district are made, or when a vacancy shall exist for any cause, and all appointments shall be made from the original list if those named therein are found disqualified as herein provided; if not so qualified, then from a supplemental list so filed. If no list is filed by a party, and if within three days after notice in writing by the commissioner to the chairman of the county committee of such party, no list is filed, the commissioner of elections may appoint qualified persons, members of the party in default, to act as election officers, and the enrollment of such person shall be sufficient evidence of the party

affiliation of such person. If a qualified person cannot be obtained for any election office from the list or lists filed by a party, and if within three days after notice in writing by the commissioner of elections to the chairman of the county committee of such party, an additional list is not filed containing the name or names of one or more qualified persons, the commissioner of elections may fill such office by the appointment of a qualified person, a member of the party in default. The commissioner of elections shall from time to time, as he may deem necessary, hold a school for the instruction of inspectors of election and general clerks. Such school shall not be held at any hour earlier than seven o'clock in the evening, and notice shall be given by the commissioner to each inspector of election and clerk stating the time and place such school will be held. The notice shall be by mail and either written or printed. If any inspector of election or clerk shall fail to attend such school after receiving notice thereof, the commissioner may remove him from office and fill the vacancy in the manner provided for in this article. Each election officer shall be paid one dollar for the time spent in attending a school of instruction, and the election officers of the towns of Monroe county, if such school be held at any place outside the town in which they respectively reside, shall be paid in addition the car fare going to and returning from the school. The money due an election officer for attending a school of instruction shall be paid at the same time and in the same manner as the pay for his other services. The commissioner of election shall have the power on any day of election, registration or primary election to remove from office forthwith any inspector of election or clerk for intoxication or failure to perform his duty in a satisfactory manner and to make a temporary appointment to fill the vacancy caused by such removal.

Added by L. 1916, ch. 7; amended by L. 1919, ch. 504, in effect Oct. 1, 1919.

### § 213. Office for commissioner.

It shall be the duty of the board of supervisors of Monroe county to provide an office for such commissioner of elections suitable for the preservation of the records of said office and for the doing of the work devolved upon such commissioner under and by reason of this article and the necessary furniture thereof. The expense of providing and furnishing such office shall be a county charge and be audited and paid as other county expenses are paid.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

**§ 214. Custody of records.**

All books, documents, papers, records and election appliances or appurtenances held or used by or under the control of any officer or officers of Monroe county or of any political subdivision thereof or therein and relating to or used in the conduct of general or special elections or official primaries, including voting machines used and owned by any political subdivision of Monroe county shall, upon request of the commissioner of elections be transferred to the care, custody and control of such commissioner.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

**§ 215. Employees.**

The commissioner of elections may appoint such employees as the board of supervisors of Monroe county shall by resolution from time to time authorize, and such employees shall receive such salaries and compensation as such board shall by resolution fix and determine. Each employee shall perform such duties as the commissioner of elections shall prescribe and shall hold office at the pleasure of such commissioner. The salary of the commissioner of elections of Monroe county shall be three thousand dollars per annum. Such salaries and compensation shall be paid in the same manner as the salaries of the county officers are paid.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

**§ 216. Notices.**

All notices which are now or which hereafter may be required by law to be given by the secretary of state or any other officer to any officer of Monroe county or of any political subdivision thereof or therein relating to the holding of any election or official primary, and stating the officers to be elected or nominated or party positions to be filled thereat, or the questions to be voted upon by the people from and after the appointment and qualification of the first commissioner hereunder shall be communicated by the secretary of state or other officer to the commissioner of elections of Monroe county.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

**§ 217. Filing papers; general powers and duties of commissioner.**

All certificates of nomination for office to be voted for by the electors of Monroe county or any political subdivision thereof or therein at any election to which this article applies, all declina-

tions of nominations for office, all certificates of nomination to fill vacancies caused by such declinations or by death, all designations, all declinations of designations, all certificates of designations to fill vacancies caused by such declinations, all statements of candidates' expenses, expenses of election or nomination, and all rules and regulations of political parties otherwise required by law to be filed with any officer of Monroe county or any political subdivision thereof or therein, shall be filed in the office of the commissioner of elections hereby established, and such commissioner shall be the custodian of primary records for Monroe county and secretary of the county board of canvassers. The office of the commissioner shall be public and open on every business day of the year, during such reasonable hours as the commissioner shall designate. The commissioner may adopt rules and regulations for the conduct of his office, not inconsistent with this chapter. The official papers, records and documents of his office shall be public and open to inspection by any citizen of the state during office hours. Except as otherwise provided in this article, such commissioner shall have the powers and duties of a board of elections prescribed by this chapter or other statute and references to such board shall be deemed to mean and include such commissioner.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

**§ 218. Purchase of supplies, including voting machines; expenses of commissioner.**

When the common council of any city, the town board of any town or the board of trustees of any village in the county of Monroe shall have adopted voting machines, the commissioner of elections shall direct the purchase of the number of machines authorized by such local authorities, and may thereafter, when authorized by such local authorities, direct the purchase of new or additional machines for such city, town or village. The commissioner may direct the purchase of any kind of voting machines approved by the state board of voting machine commissioners or the use of which has been specifically adopted by law. All supplies or election appliances to be used or furnished by the commissioner of elections for election purposes shall be purchased by the purchasing agent of Monroe county as other county supplies are purchased. The commissioner is hereby authorized to



cause all necessary repairs and alterations to be made and employ such help as may be necessary in making such repairs and in moving, setting up and caring for all election materials and appliances. All expenses for supplies, advertising, posting and circulation of election notices and printing lists of registered voters and other expenses arising from the conduct of elections in Monroe county or in any political subdivision thereof or therein, incurred by or under the direction of the commissioner of elections except the compensation of inspectors of election and general clerks, shall hereafter be a charge against the county or political subdivision thereof or therein, as specified in this chapter and shall be certified by the commissioner of elections and audited and paid as are other claims against such county; provided, however, that any city, town or village may, upon request of the local authorities, assume the payment of the cost of purchasing voting machines and shall have the power to issue bonds, certificates of indebtedness or other obligations which shall be a charge on the city, town or village, payable at such time or times as such authorities may determine, issued with or without interest and not issued or sold at less than par.

Added by L. 1916, ch. 7; amended by L. 1919, ch. 504, in effect May 9, 1919.

#### § 219. Apportionment of expenses.

Such commissioner of elections shall, on or before the first day of October in each year, certify to the clerk of the board of supervisors of Monroe county the total amount of the expenses of his office, including salaries for the preceding year, and shall certify to such clerk the portion of such expenses which under the provisions of law is to be borne by the county at large and the portions thereof which are to be borne by each political subdivision thereof or therein, and the clerk of such board in spreading taxes levied upon taxable property of such county or any political subdivision thereof or therein shall include in the amount spread upon the county at large and the political subdivision thereof or therein the amount so certified by the commissioner to be borne by the county at large or the political subdivision respectively.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.



**§ 220. Publication of notices.**

All publications, advertising or posting of election notices required by law relating to general and special elections or official primaries to which this article applies and all notices of such elections or primaries as are required by law to be published, advertised or posted shall be published, advertised or posted by the commissioner of elections.

*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*

**§ 221. Polling places, election districts, et cetera**

It shall be the duty of the commissioner of elections at least thirty days before each primary day to fix the polling places for each primary district in Monroe county and on or before the first Tuesday in September in each year to fix the polling places for registration and election in each election district in Monroe county. It shall be the duty of the commissioner to create, alter or divide the various political subdivisions of Monroe county into election districts as provided for in sections two hundred and ninety-six and four hundred and nineteen of this chapter. Whenever the commissioner shall have created, altered or divided the election districts in any political subdivision of Monroe county he shall execute a certificate giving the boundaries of the new districts and file it in his office and make and file a copy thereof in the office of the city or town clerk, as the case may be, and also publish a description of such boundaries once in the paper designated to publish election notices.

*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*

**§ 222. Voting machines.**

It shall be the duty of the commissioner of elections to cause the proper ballot labels to be placed on voting machines, and to cause the machines to be placed in proper order for voting and to examine all voting machines before they are sent out to the different polling places, and see that all the registering counters are set at zero (000), and lock all voting machines so that the counting machinery cannot be operated, and seal each one with a numbered metal seal. The commissioner of elections may appoint a custodian of voting machines who shall, under the direction of the commissioner of elections, have charge of and represent the commissioner of elections during the preparation of the voting machines and serve at the pleasure of the commissioner, but not to exceed forty

days for any one election. Before preparing a voting machine for an election written notice shall be mailed to the chairmen of the county committees of the two political parties which polled the greatest number of votes at the last preceding election of a governor, stating the time and place where the machines will be prepared; at which time and place one representative of each of such political parties, certified by the respective chairmen of the county committees of such parties, shall be entitled to be present and see that the machines are properly prepared and placed in proper condition for use at election. The custodian of voting machines and the party representatives shall take the constitutional oath of office and shall be paid five dollars for each day so employed, which shall be paid in the same manner as the salaries of county officers are paid. It shall be the duty of such representatives to be present at the preparation of voting machines for election and to see that the machines are properly prepared and that all the registering counters are set at zero (000). When a machine has been prepared for election it shall be the duty of such representatives to make a certificate in writing, which shall be filed in the office of the commissioner of elections, stating the number of the machine, whether or not all of the counters are set at zero (000), the number registered on the protective counter, if one is provided, and the number on the metal seal with which the machine is sealed. Such representatives shall perform their duties under the direction of the commissioner. It shall be the duty of the commissioner to cause the voting machines to be delivered at the respective polling places in which they are to be used at least one hour before the time set for the opening of the polls.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

#### § 223. Construction of article.

Nothing in this article shall be construed to affect or limit the powers of the board of supervisors of Monroe county or the town board of any town, or the village trustees of any village, in such county, as boards of canvassers for the county, towns and villages respectively. Nor shall this article apply to elections held in cities, towns or villages where elections are held at a time other than at the time of general elections. Where the provisions of this article are inconsistent with other provisions of this chapter or other statutes, the provisions of this article shall be controlling.

Added by L. 1916, ch. 7, in effect Feb. 21, 1916.

# ARTICLE 7-B.

## COMMISSIONER OF ELECTIONS IN THE COUNTY OF NIAGARA

- Section 225 Commissioner of elections for Niagara county
- 226 Appointment, qualifications and removal of commissioner.
- 227 Appointment and removal of inspectors of election and clerks.
- 228 Office for commissioner.
- 229 Custody of records.
- 230 Employees.
- 231 Notices.
- 232 Filing papers; general powers and duties of commissioner.
- 233 Purchase of supplies, including voting machines, expenses of commissioner.
- 234 Apportionment of expenses.
- 235 Publication of notices.
- 236 Polling places, election districts, et cetera.
- 237 Voting machines.
- 238 Construction of article.

### § 225. Commissioner of elections for Niagara county.

The office of commissioner of elections in the county of Niagara is hereby created, and all the rights, powers, authority, duties and obligations immediately heretofore by law vested in and imposed upon any officer or officers of the county of Niagara or any political subdivision thereof or therein, excepting the appointment, duties and obligations of inspectors of election and clerks, who shall be appointed as hereinafter provided and serve as provided by law with respect to general or special elections and official primaries in the county of Niagara or in any political subdivision thereof or therein, except elections held at a time other than the time of the general election, or of village and school district officers, and special elections for town, village and school district purposes held at such other time, shall, by force of and as an effect of this article, be transferred to and be continued in the commissioner of elections in the county of Niagara hereby created from and after the time of appointment and qualification of the first commissioner hereunder.

Added by L. 1917, ch. 202, amended by L. 1919, ch. 504, in effect May 9, 1919.

Art. 7-B is constitutional. *Vrooman v. Fish* (1918), 181 App. Div. 502, 170 N. Y. Supp. 421.

### § 226. Appointment, qualifications and removal of commissioner.

Within five days after this article takes effect the county judge, county clerk and the district attorney of Niagara county, or a majority of them, shall appoint a commissioner of elections who must be a resident voter of such county and shall file in the office of the clerk of such county a certificate of the appointment. Such commissioner of elections shall take the constitutional oath of office and file the same in the county clerk's office and shall hold

office for a term of five years; his successor to be appointed in like manner. Such term of office, except as otherwise provided in this section, shall begin on the first day of May in every fifth year, beginning with the year nineteen hundred and twenty-two. The term of the commissioner first appointed hereunder shall begin on the day the appointment is made and expire on May first, nineteen hundred and twenty-two. In case of a vacancy in the office of commissioner of elections, such county judge, county clerk and district attorney, or a majority of them, shall appoint a resident voter of Niagara county to fill such vacancy and shall file a certificate of such appointment in the office of the clerk of Niagara county. The person so appointed shall take the constitutional oath of office and serve the remainder of the term. The commissioner of elections appointed pursuant to this article shall be subject to removal by the governor in like manner as sheriffs of counties. Upon the appointment and qualification, pursuant to this section, of the first commissioner for such county, the board of elections therein shall be deemed abolished; and the terms of office of its members shall then expire. The provisions of article seven of this chapter shall not thereafter apply to the county of Niagara except section one hundred and ninety-nine; and the commissioner provided for herein shall be deemed a board of elections for the purpose of applying such section.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

#### § 227. Appointment and removal of inspectors of election and clerks.

Inspectors of election and general clerks in and for the various election districts in the county of Niagara shall be appointed as follows: The chairmen of the county committees of the two political parties which at the last preceding general election of a governor cast the highest number of votes for governor shall each file with the commissioner of elections, on or before the first day of April of each year, a list of persons who are duly qualified to serve as inspectors of election and such clerks. If the person so named is found by the commissioner to be qualified and is, in the judgment of the commissioner, a fit and proper person for such office, the commissioner or some person designated by him shall administer the constitutional oath of office and issue to him a certificate of appointment and he shall serve until his successor is appointed; but if such person is found disqualified or is, in the judgment of the commissioner, not a fit and proper person for such office his name shall be stricken from the list. A supplemental list of persons for election officers may also be filed con-

turning not more than ten names for each office. Additional supplemental lists for any election district may be filed at any time before the appointments for such district are made, or when a vacancy shall exist for any cause, and all appointments shall be made from the original list if those named therein are found disqualified as herein provided; if not so qualified, then from a supplemental list so filed. If no list is filed by a party, and if within three days after notice in writing by the commissioner to the chairman of the county committee of such party no list is filed, the commissioner of elections may appoint qualified persons, members of the party in default, to act as election officers, and the enrollment of such persons shall be sufficient evidence of the party affiliation of such person. If a qualified person cannot be obtained for any election office from the list or lists filed by a party, and if within three days after notice in writing by the commissioner of elections to the chairman of the county committee of such party an additional list is not filed containing the name or names of one or more qualified persons, the commissioner of elections may fill such office by the appointment of a qualified person, a member of the party in default. The commissioner of elections may from time to time, as he may deem necessary, hold a school for the instruction of inspectors of election and general clerks. Such school shall not be held at any hour earlier than seven o'clock in the evening, and notice shall be given by the commissioner to each inspector of election and clerk stating the time and place such school will be held. The notice shall be by mail and either written or printed. If an inspector of election or clerk shall fail to attend such school after receiving notice thereof, the commissioner may remove him from office and fill the vacancy in the manner provided for in this article. Each election officer shall be paid one dollar for the time spent in attending a school of instruction, and the election officers of the towns of Niagara county, if such school be held at any place outside the town in which they respectively reside, shall be paid in addition the car fare going and returning from the school. The money due an election officer for attending a school of instruction shall be paid at the same time and in the same manner as the pay for his other services. The commissioner of elections shall have the power on any day of election, registration or primary election to remove from office forthwith any inspector of election or general clerk for intoxication or failure to perform his duty in a satisfactory manner and to make a temporary appointment to fill the vacancy caused by such removal.

Added by L. 1917, ch. 202, amended by L. 1919, ch. 594, in effect May 2, 1919.



**§ 228. Office for commissioner.**

It shall be the duty of the board of supervisors of Niagara county to provide an office for such commissioner of elections suitable for the preservation of the records of said office and for the doing of the work devolved upon such commissioner under and by reason of this article and the necessary furniture thereof. The expense of providing and furnishing such office shall be a county charge and be audited and paid as other county expenses are paid.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

**§ 229. Custody of records.**

All books, documents, papers, records and election appliances or appurtenances held or used by or under the control of any officer or officers of Niagara county or of any political subdivision thereof or therein and relating to or used in the conduct of general or special elections or official primaries, including voting machines used and owned by any political subdivision of Niagara county, shall, upon request of the commissioner of elections, be transferred to the care, custody and control of such commissioner.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

**§ 230. Employees.**

The commissioner of elections is hereby authorized and empowered to appoint a deputy commissioner of elections, who shall perform such duties as the commissioner of elections shall prescribe and also a secretary to the commissioner, who shall each hold office at the pleasure of the said commissioner, and such additional employees as the board of supervisors of Niagara county shall, by resolution, from time to time authorize; and such additional employees shall receive such salaries and compensation as the said board of supervisors shall, by resolution, fix and determine. Each of such employees shall perform such duties as the commissioner of elections shall prescribe and shall each hold office at the pleasure of said commissioner. The salary of the commissioner of elections of Niagara county shall be two thousand dollars per annum, the salary of the deputy commissioner of elections shall be fixed by the commissioner at not to exceed one thousand six hundred and eighty dollars per annum, and the salary of the secretary to the commissioner shall be fixed by the commissioner at not to exceed one thousand one hundred dollars per annum. Such salaries and compensation shall be paid in the same manner as the salaries of the county officers are paid.

Added by L. 1917, ch. 202 amended by L. 1920, ch. 879, in effect May 24, 1920.



**§ 231. Notices.**

All notices which are now or which hereafter may be required by law to be given by the secretary of state or any other officer to any officer of Niagara county or of any political subdivision thereof or therein relating to the holding of any election or official primary, and stating the officers to be elected or nominated or party positions to be filled thereat, or the questions to be voted upon by the people from and after the appointment and qualification of the first commissioner hereunder, shall be communicated by the secretary of state or other officer to the commissioner of elections of Niagara county.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

**§ 232. Filing papers: general powers and duties of commissioner.**

All certificates of nomination for office to be voted for by the electors of Niagara county or any political subdivision thereof or therein at any election to which this article applies, all declinations of nominations for office, all certificates of nomination to fill vacancies caused by such declinations or by death, all designations, all declinations of designations, all certificates of designations to fill vacancies caused by such declinations, all statements of candidates' expenses, expenses of election or nomination, and all rules and regulations of political parties otherwise required by law to be filed with any officer of Niagara county or any political subdivision thereof or therein, shall be filed in the office of the commissioner of elections hereby established, and such commissioner shall be the custodian of primary records for Niagara county and secretary of the county board of canvassers. The office of the commissioner shall be public and open on every business day of the year, during such reasonable hours as the commissioner shall designate. The commissioner may adopt rules and regulations for the conduct of his office not inconsistent with this chapter. The official papers, records and documents of his office shall be public and open to inspection by any citizen of the state during office hours. Except as otherwise provided in this article, such commissioner shall have the powers and duties of a board of elections prescribed by this chapter or other statute and references to such board shall be deemed to mean and include such commissioner.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

**§ 233. Purchase of supplies, including voting machines: expenses of commissioner.**

When the common council of any city, the town board of any town or the board of trustees of any village in the county of Ni-

agara shall have adopted voting machines, the commissioner of elections shall direct the purchase of the number of machines authorized by such local authorities, and may thereafter, when authorized by such local authorities, direct the purchase of new or additional machines for such city, town or village. The commissioner may direct the purchase of any kind of voting machines approved by the state board of voting machine commissioners or the use of which has been specifically adopted by law. All supplies or election appliances to be used or furnished by the commissioner of elections for election purposes shall be purchased by such commissioner. The commissioner is hereby authorized to cause all necessary repairs and alterations to be made and employ such help as may be necessary in making such repairs and in moving, setting up and caring for all election materials and appliances. All expenses for supplies, advertising, posting and circulation of election notices and printing lists of registered voters and other expenses arising from the conduct of elections in Niagara county or in any political subdivision thereof or therein, incurred by or under the direction of the commissioner of elections, except the compensation of inspectors of election and general clerks, shall hereafter be a charge against the county or political subdivision thereof or therein, as specified in this chapter, and shall be certified by the commissioner of elections and audited and paid as are other claims against such county; provided, however, that any city, town or village may, upon request of the local authorities, assume the payment of the cost of purchasing voting machines and shall have the power to issue bonds, certificates of indebtedness or other obligations which shall be a charge on the city, town or village, payable at such time or times as such authorities may determine, issued with or without interest and not issued or sold at less than par.

Added by L. 1917, ch. 262; amended by L. 1919, ch. 504, in effect May 9, 1919.

#### § 234. Apportionment of expenses.

Such commissioner of elections shall, on or before the first day of October in each year, certify to the clerk of the board of supervisors of Niagara county the total amount of the expenses of his office, including salaries for the preceding year, and shall certify to such clerk the portion of such expenses which under the provisions of law is to be borne by the county at large and the portions thereof which are to be borne by each political subdivision thereof or therein, and the clerk of such board in spreading taxes levied upon taxable property of such county or any political subdivision thereof or therein shall include in the amount spread upon the

county at large and the political subdivision thereof or therein the amount so certified by the commissioner to be borne by the county at large or the political subdivision respectively.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

**§ 235. Publication of notices.**

All publications, advertising or posting of election notices required by law relating to general and special elections or official primaries to which this article applies and all notices of such elections or primaries as are required by law to be published, advertised or posted shall be published, advertised or posted by the commissioner of elections.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

**§ 236. Polling places, election districts, et cetera.**

It shall be the duty of the commissioner of elections at least thirty days before each primary day to fix the polling places for each primary district in Niagara county and on or before the first Tuesday in September in each year to fix the polling places for registration and election in each election district in Niagara county. It shall be the duty of the commissioner to create, alter or divide the various political subdivisions of Niagara county into election districts as provided for in sections two hundred and ninety six and four hundred and nineteen of this chapter. Whenever the commissioner shall have created, altered or divided the election districts in any political subdivision of Niagara county he shall execute a certificate giving the boundaries of the new districts and file it in his office and make and file a copy thereof in the office of the city or town clerk, as the case may be, and also publish a description of such boundaries once in the paper designated to publish election notices.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

**§ 237. Voting machines.**

It shall be the duty of the commissioner of elections to cause the proper ballot labels to be placed on voting machines, and to cause the machines to be placed in proper order for voting and to examine all voting machines before they are sent out to the different polling places, and see that all the registering counters are set at zero (000), and lock all voting machines so that the counting machinery cannot be operated, and seal each one with a numbered metal seal. The commissioner of elections may appoint a custodian of voting machines who shall, under the direction of the commissioner of elections, have charge of and represent the commissioner

of elections during the preparation of the voting machines and serve at the pleasure of the commissioner, but not to exceed forty days for any one election. Before preparing a voting machine for an election written notice shall be mailed to the chairman of the county committees of the two political parties which polled the greatest number of votes at the last preceding election of a governor, stating the time and place where the machines will be prepared; at which time and place one representative of each of such political parties, certified by the respective chairmen of the county committees of such parties, shall be entitled to be present and see that the machines are properly prepared and placed in proper condition for use at election. The custodian of voting machines and the party representatives shall take the constitutional oath of office and shall be paid five dollars for each day so employed, which shall be paid in the same manner as the salaries of county officers are paid. It shall be the duty of such representatives to be present at the preparation of voting machines for election and to see that the machines are properly prepared and that all the registering counters are set at zero (000). When a machine has been prepared for election it shall be the duty of such representatives to make a certificate in writing, which shall be filed in the office of the commissioner of elections, stating the number of the machine, whether or not all of the counters are set at zero (000), the number registered on the protective counter, if one is provided, and the number on the metal seal with which the machine is sealed. Such representatives shall perform their duties under the direction of the commissioner. It shall be the duty of the commissioner to cause the voting machines to be delivered at the respective polling places in which they are to be used at least one hour before the time set for the opening of the polls.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917.

#### § 238. Construction of article.

Nothing in this article shall be construed to affect or limit the powers of the board of supervisors of Niagara county or the town board of any town, or the village trustees of any village, in such county, as boards of canvassers for the county, towns and villages respectively. Nor shall this article apply to elections held in cities, towns or villages where elections are held at a time other than at the time of general elections. Where the provisions of this article are inconsistent with other provisions of this chapter or other statutes, the provisions of this article shall be controlling.

Added by L. 1917, ch. 202, in effect Apr. 17, 1917

## ARTICLE 8.

## TIMES, PLACES, NOTICES, OFFICERS AND EXPENSES OF ELECTIONS.

- Section 290 Date of general election  
 291 Time of opening and closing polls  
 292 Filling vacancies in elective offices.  
 293 Notice of elections.  
 294 Notice of submission of proposed constitutional amendments or other propositions or questions  
 295 Publication of concurrent resolutions, proposing constitutional amendments and other propositions.  
 296 Creation, division and alteration of election districts.  
 296a Special provision as to election districts in certain congressional districts.  
 297 Abolition, consolidation or changing of election districts in towns.  
 298 Maps and certificates of boundaries of election districts  
 299 Descriptions of places for registry and voting  
 300 Equipment of polling places.  
 300a Display of American flag  
 301 Publication of list of registration and polling places.  
 301a Publication of list of registration and polling places in certain towns  
 302 Election officers; designation, number and qualifications.  
 302a Powers and duties of canvassing inspectors limited, in a city of over one million inhabitants  
 303 Appointment of election officers in cities  
 304 Authentication of party lists  
 305 Examination as to qualifications  
 306 Party selection in the city of New York  
 307 Oath of office; certificate of appointment  
 308 Removals, vacancies; transfers  
 309 Certificates of service; exemption from jury duty; payment  
 310 Special penalties  
 311 Appointment of inspectors of election in towns.  
 312 Appointment of clerks in towns  
 313 Supplying vacancies and absences  
 313a Filling vacancies in board of canvassing inspectors in cities of over one million inhabitants  
 314 Organization of boards of inspectors.  
 315 Preservation of order by inspectors  
 316 Ballot boxes.  
 317 Voting booths and guard rails  
 318 Apportionment of election expenses  
 319 Fees of election officers and others  
 320 Delivery of election laws to clerks, boards and election officers.

## § 290. Date of general election.

A general election shall be held annually on the Tuesday next succeeding the first Monday in November.

Derivation: Election Law, § 2.

Cross-References. City elections when to be held. See N. Y. Const. art. 12 § 2 (part 2) and General election day a public holiday. General Election Law § 24 (part 1) (note). Time of holding town meetings. See part 4 (note) of holding of town elections. See part 4 (note).

Sale of liquor on election days. "It shall not be lawful for any person, whether for or not paid such tax of sale to sell, offer or expose for sale or give away any liquor."

"On the day day of a general or special election, or city election or town meeting or village election within a corporation of a mile of any polling place where the polls for such election or town meeting shall be open." Pl. § 10, Election Law § 10. See 12.

No parade or drill of national guard on election day. "No parade or drill of the active militia shall be ordered on any day during which any election shall be held except in case of riot, invasion or insurrection or imminent danger thereof." Pl. § 111 Military Law

No tolls to be charged voters on election days. — "No tolls shall be charged or collected at any gate from any person going to and from a public



worship a funeral, school, town meeting or election, at which he is a voter to cast his vote. " Pt. § 130 Transportation Corporation Law.

Shall be considered as Sunday for such purposes as the presenting, protesting, etc., of bills of exchange, bank checks and promissory notes. Negotiable Instruments Law, § 145.

Sheriffs' and county clerks' offices not to be open on election day. §§ 153, 184 County Law.

Sale of property in foreclosure or mortgage by advertisement not to be held on election day. Code Civ. Proc. § 2793.

Courts may sit on election day, the Election Law having repealed Laws 1842, chapter 130, which prohibited such sitting.

Issuance and service of legal process not prohibited on election day. *Didsbury v. Van Tassell*, (1890) 36 Hun 423, 10 N. Y. Supp. 32.

### § 201. Time of opening and closing polls.

The polls of every general election, and, unless otherwise provided by law, of every other election shall be opened at six o'clock in the forenoon and shall close at six o'clock in the afternoon. There shall be no adjournment or intermission until the polls are closed. Electors entitled to vote who are in the polling place at or before six o'clock in the afternoon shall be allowed to vote.

Derivation: Election Law, § 3, as amended by L. 1898, ch. 235, § 1, L. 1901, ch. 184, § 1.

Amended by L. 1911, ch. 649, and L. 1913, ch. 820, L. 1918, ch. 323, in effect Apr. 24, 1918.

L. 1918, ch. 323, § 63. The amendment to section two hundred and ninety-one of the election law, made by section thirty of this act, shall not affect the provisions of section two hundred and ninety-one of such law as added by chapter 50 of the laws of nineteen hundred and eighteen. . . .

Under the General Municipal Law, § 191, as added by L. 1921, ch. 70, and amended by L. 1921, ch. 209, the governing board of a city or village may provide that between the last Sunday in March and the last Sunday in October the standard time may be advanced one hour; and all official proceedings shall be so regulated.

Consolidators' note. The last two sentences of the old section, making it unlawful to sell, etc., liquor on any general or special election day within a quarter of a mile of any voting place, while the polls are open and making a violation a misdemeanor, are here omitted. Laws 1904, ch. 205, amended a similar provision in section 31 of the Liquor Tax Law (L. 1896, ch. 1121), and being the later act, superseded the provision here omitted.

Cross-references.—Duration of town meeting. Town Law, § 51 (part 4, part 5). Time for holding village elections. Village Law, § 28 (part 4, part 5).

Local or special laws as to the opening of elections cannot be made by the legislature. Const., art. 3, § 18, subd. 9.

Amendments, however, may be made to such local or special laws as were in existence before 1875. *People ex rel. Lander v. Carson*, (1894), 10 Misc. 237, 246, 30 N. Y. Supp. 817, aff'd 86 Hun 617, 35 N. Y. Supp. 1114, 153 N. Y. 491.

Statute is directory, not imperative, as to the hours of opening and closing the polls, election not necessarily void because of a violation of statutory regulations, though inspectors might be liable to indictment therefor. *People v. Cook*, 1883, 8 N. Y. 61, 91.

Constitutionality. A provision that polls shall be open at six o'clock in the morning and closed at four o'clock in the afternoon is constitutional. *Matter of City of New York v. Election Dist.*, 1888, 18 N. Y. St. Rep. 785, 3 N. Y. Supp. 107.

The delivery of official ballots to electors must cease at five o'clock, and no person who has not received a ballot before that time can vote. *Newcomb v. Levy*, 1908, 128 App. Div. 329, 112 N. Y. Supp. 657.

Electors who have received their ballots before five o'clock should be permitted to cast them. *Rept. of Atty. Gen.*, (1908) 409.

Where voting machines are used, each voter whose qualifications have been passed upon and approved by the inspectors at five o'clock are entitled to complete the act of voting after that hour. *Rept. of Atty. Gen.*, (1904), 548.

Village Elections.—Inapplicable to election on question of incorporating a village. *Matter of Taylor* (1896), 3 App. Div. 244, 35 N. Y. Supp. 348, aff'd 150 N. Y. 242.



Village Law governs the opening and closing of the polls at a village election. Rept. of Atty.-Gen. (1896), 93.

Inapplicable to town meeting held at a different time than that of a general election. *People v. Hasbrouck* (1807), 21 Misc. 188, 47 N. Y. Supp. 109; *People ex rel. Van Sickle v. Austin* (1897), 20 App. Div. 1, 46 N. Y. 526.

§ 292-a. Time of opening and closing polls at city elections held at a time other than general elections, during the year nineteen hundred and eighteen.

Added by L. 1918, ch. 50, in effect Mar. 15, 1918. See Part IA, Special Provisions of Election Law for Year 1918, post, p. 288a.

§ 293. Filling vacancies in elective offices.

A vacancy occurring before October fifteenth of any year in any office authorized to be filled at a general election, shall be filled at the general election held next thereafter, unless otherwise provided by the constitution, or unless previously filled at a special election. Upon the failure to elect to any office, except that of governor or lieutenant-governor, at a general or special election, at which such office is authorized to be filled, or upon the death or disqualification of a person elected to office before the commencement of his official term, or upon the occurrence of a vacancy in any elective office which can not be filled by appointment for a period extending to or beyond the next general election at which a person may be elected thereto, the governor may in his discretion make proclamation of a special election to fill such office, specifying the district or county in which the election is to be held, and the day thereof, which shall not be less than thirty nor more than forty days from the date of the proclamation.

A special election shall not be held to fill a vacancy in the office of a representative in congress unless such vacancy occurs on or before the first day of July of the last year of the term of office, or unless it occurs thereafter and a special session of congress is called to meet before the next general election, or be called after October fourteenth of such year; nor to fill a vacancy in the office of state senator, unless the vacancy occurs before the first day of April of the last year of the term of office; nor to fill a vacancy in the office of a member of assembly, unless occurring before the first day of April in any year, unless the vacancy occurs in either such office of senator or member of assembly after such first day of April and a special session of the legislature be called to meet between such first day of April and the next general election or be called after October fourteenth in such year. If a special election to fill an office shall not be held as required by law, the office shall be filled at the next general election.

Derivation: Election Law, § 4, as amended by L. 1907, ch. 119, § 1.

Amended by L. 1911, ch. 801, § 62, in effect Nov. 15, 1911.

Cross-References.—Legislature to provide for filling vacancies. N. Y. Const., art. 10, § 5 (part 2, post). Vacancies in offices of judge of Court of Appeals, justice of Supreme Court, county judge or surrogate. N. Y. Const., art. 6, §§ 8, 4, 15 (part 2, post). Filling vacancies in elective offices generally. Public Officers Law, §§ 41, 42 (part 6, post). Terms of officers chosen to fill vacancies. Public Officers Law, § 38 (part 6, post). Creation of vacancies. Public Officers Law, § 30.

Application.—This section relates only to general elections and does not apply to a town meeting held at a time different than a general election. *People ex rel. Loyett v. Randall* (1895), 12 Misc. 619, 34 N. Y. Supp. 450.

Vacancy defined.—The word "vacancy" describes the condition of an office when it is first created and has not been filled by an incumbent. *Matter of Collins* (1896), 16 Misc. 508, 40 N. Y. Supp. 517.

When office vacant.—An office is vacant in the eye of the law whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some future event. *Matter of Collins* (1896), 16 Misc. 508, 40 N. Y. Supp. 517.

A newly created office which is not filled by the tribunal which created it becomes vacant on the instant of its creation. *Matter of Collins* (1896), 16 Misc. 508, 40 N. Y. Supp. 517.

Vacancy in office of recorder to be filled pursuant to this provision. Reports of Atty.-Gen. (1903), 503; (1904) 205.

When a vacancy occurs in the office of sheriff between the fifteenth of October and the general election day in November following, it cannot be filled at that election, but a special election should be called for that purpose, of which not less than thirty or more than forty days' notice must be given. *Matter of Mitchell v. Boyle* (1916), 219 N. Y. 242.

The Governor has power to call a special election to fill a vacancy caused by the death of a sheriff, after October 15th. *People ex rel. Conklin v. Boyle* (1917), 38 Misc. 364, 140 N. Y. Supp. 72.

**Vacancy in office of representative in Congress.**—Where a representative in Congress elected for the term beginning March 4, 1912, and ending March 4, 1915, died on September 1, 1913, a board of elections may, under section 292 of the Election Law, place the name of a candidate to fill the vacancy upon the official ballot, although the Governor of the State has not issued a certificate of election to fill said vacancy as provided by article 1, section 2, subdivision 4, of the Constitution of the United States. *Matter of Wilkins* (1913), 136 App. Div. 523.

**Filling anticipated vacancy in the office of representative in Congress.**—The governor is authorized in his discretion to make a proclamation of a special election to fill the anticipated vacancy created by the death of a representative in Congress who died on the 4th day of December following his election. *Rept. of Atty.-Gen. (1914)*, Vol. 2, p. 392.

**Section cited.** Opinion of Atty.-Gen. (1919), 21 State Dept. Rep. 278.  
**§ 293. Notices of elections.**

The secretary of state shall, at least two months before each general election make and transmit to the custodian of primary records a notice under his hand and official seal, stating the day upon which such election shall be held, and stating each officer, except city village and town officers, who may be lawfully voted for at such election by the electors of such county or any part thereof. If any such officer is to be elected to fill a vacancy, the notice shall so state. The secretary of state shall forthwith, upon the filing in his office of the governor's proclamation ordering a special election, make and transmit to the custodian of primary records a like notice of the officers to be voted for at such special election in such county or city or any part thereof, and cause such proclamation to be published in the newspapers published in such county having large circulation therein, at least once a week until such election shall be held.

Such publication of primary records shall forthwith, upon the receipt of either such notice, file and record the same in his office, and shall cause a copy of such notice to be published once in each week if it relates to a special election until the election therein specified and otherwise twice in each of the two months preceding the election, in the newspapers designated to publish election notices. They shall also publish, as a part of such notice, a list of all city village and town officers who may lawfully be voted for at such election by the electors of such county or any part thereof and the city village and town clerk of each county shall, at least two months before each general election make and transmit to the custodian of primary records a notice under their respective hands and official seals, stating each city village or town officer to be voted for at such election. They shall not publish as a part of such notice the text of proposed constitutional amendments or other propositions or questions included in the notice of the general election received from the secretary of state under this section nor the abstract of such proposed amendment proposition or question, included in such notice by the secretary of state.

**Derivation:** Election Law, § 5, as amended by L. 1907, ch. 379, § 1; L. 1901, ch. 644, § 1 and ch. 232, § 1; L. 1903, ch. 644, § 1.

**Amended by** L. 1911, ch. 649 and L. 1913, ch. 820, in effect Dec. 17, 1913.

**Cross References.** Designation of newspapers to publish election notices may be board of supervisors. See County Law §§ 29, 22.

**Designation of newspapers.**—The power of the supervisors of a county to designate newspapers to publish notices of election and the official canvass of elections under section 22 of the County Law was by section 1580 of the charter of the city of New York (as amended in 1901) transferred to the board of aldermen of that city and not to the board of elections. *Standard Publishing Co. v. City of New York* (1908), 111 App. Div. 260, 97 N. Y. Supp. 740.

A designation of newspapers to publish election notices is reviewable by writ of certiorari. *People ex rel. Press Publishing Co. v. Martin* (1894), 142 N. Y. 228, 40 Am. St. Rep. 582, affg 72 Hun 354.

Under section 22 of the County Law the board of supervisors of a county is authorized to test the publication of the election notices in but two newspapers, one representing each of the two political parties. *Matter of Ford v.*

*Supreme* (1904), 92 App. Div. 119, 87 N. Y. Supp. 407, appeal dismissed, 17 N. Y. 616.

**Publication of election notices.**—Where the county clerk of a county delivers to the publisher of a duly designated newspaper a quantity of matter with instructions to publish only that portion thereof which is necessary to comply with the Election Law, the publisher assumes the responsibility of preparing from the material delivered proper election notices, and of publishing the same, and he is only entitled to receive reasonable compensation for the portion thereof which the Election Law requires to be published. It is not required, however, to employ such language or form as would result in having the notices occupy the least possible space consistent with the requirements of law. *People ex rel. Herrick v. Board of Supervisors* (1906), 106 App. Div. 40, 93 N. Y. Supp. 426.

Where an office to be filled is omitted from a notice of election, the voter may nevertheless write in his ballot the name of a candidate for such office. *People ex rel. Goring v. President* (1894), 144 N. Y. 616, aff'd 9 Misc. 246.

**Notice of election of senators.** *Rept. of Atty. Gen.* (1907), 286.

### § 294. Notice of submission of proposed constitutional amendments or other propositions or questions.

Every amendment to the constitution proposed by the legislature, unless otherwise provided by law, shall be submitted to the people for approval at the next general election, after action by the legislature in accordance with the constitution; and whenever any such proposed amendment to the constitution or other proposition, or question provided by law to be submitted to a popular vote, shall be submitted to the people for their approval, the secretary of state shall include in his notice of the general election, a copy of the text of such amendment, proposition or question, setting out all new matter in italics and inclosing in brackets all matter to be eliminated from existing law, and at the bottom of each page shall be appended the words, Explanation—Matter in italics is new; matter in brackets [ ] is old law to be omitted. In addition to the text, such notice shall contain an abstract of such proposed amendment, proposition or question, prepared by said secretary with the advice of the attorney-general, concisely stating the purpose and effect thereof. If more than one such amendment, proposition or question is to be voted upon at such election, such amendments, propositions or questions respectively shall be separately and consecutively numbered. The clerk of each county except the clerk of any county having a commissioner or board of elections, the commissioner of elections of each county wherein such commissioner has been appointed and the board of elections of the city of New York shall forthwith, upon receipt of such notice, cause printed copies thereof to be made and on the first day of registration shall cause an adequate number of such printed copies to

be placed in the places designated pursuant to the provisions of this act, for the meetings for registration and distributed therein by the chairman of the board of inspectors on each day of registration to the electors applying for registration. If such amendment, proposition or question is to be submitted at a special election, the secretary of state shall, at least twenty days before the election, make and transmit to each county clerk, except the clerk of any county having a commissioner or board of elections, the commissioner of elections of each county wherein such commissioner has been appointed, and the board of elections of the city of New York a like notice. Each county clerk and commissioner of elections aforesaid and the board of elections of the city of New York, shall, forthwith upon the receipt of such notice, file and record it in his office, and shall cause a copy of such notice to be published once a week until the election therein specified in the newspapers designated to publish election notices, and in addition thereto on the day of registration for such special election, each clerk of a county, except the clerk of any county having a commissioner or board of elections, the commissioner of elections of each county wherein such commissioner has been appointed and the board of elections of the city of New York shall cause an adequate number of such notices to be printed and placed in the places designated for the meeting for registration for such special election, and distributed thereon by the chairman of the board of inspectors to the electors applying for registration. In election districts where personal registration of electors is not required, after the last day of the registration the inspectors of election shall deliver to the town clerk all of the printed copies of such notices remaining in their hands and the town clerk shall within five days after receipt of the same mail a copy thereof to each registered elector in such town, who has not received such copy from the inspectors. The expense thus incurred shall be a county charge and paid accordingly. The inspectors of election at the time of making up their registry list shall indicate in a suitable manner the name of each elector to whom they have delivered in person printed copies of such proposed amendment, proposition or question and abstract.

**Derivation:** Election Law, § 6, as amended by L. 1897, ch. 379, § 2, L. 1901, ch. 95, § 2; L. 1905, ch. 413, § 2. Amended by L. 1910, ch. 446, in effect June 8, 1910.

**Consolidators' note.**—After "notice" the words "to the county clerk and the board of elections of the city of New York, and the commissioner of elections of the county of Erie," are omitted as unnecessary, the character of the notice being fully prescribed in the preceding section.

**Cross-References.** Submission of constitutional amendments N. Y. Const., art. 14 (part 2, part). Designation of newspapers to publish election notices County Law, §§ 20-22.

**Election notices,** containing constitutional amendments, form of. Report of Atty. Gen., (1905) at 276.

**Common council of a city** has no power to require the insertion of certain questions on the official ballot. Report of Atty. Gen., (1905) 488.

**Numbering propositions.** Provision not applicable to questions relating to the selling of liquor. Matter of Webster, (1906) 50 Misc. 253, 100 N. Y. Supp. 928, aff'd 113 App. Div. 888 98 N. Y. Supp. 1116.

**Form of election notice** containing constitutional amendments and other propositions. Rept. of Atty. Gen., June 24, 1909.

The Secretary of State has no authority to publish or submit to the people a proposed amendment to the Constitution which has passed a previous Legislature, when the bill as passed a second time inadvertently directs that it be referred to the Legislature to be chosen at the next general election of senators. Rept. of Atty. Gen., June 12, 1915.

## § 295. Publication of concurrent resolutions, proposing constitutional amendments and other propositions.

The secretary of state shall cause each concurrent resolution of the two houses of the legislature agreeing to a proposed amendment to the constitution, which is referred to the legislature to be chosen at the next general election of senators, to be published once, three months before such election, and thereafter twice in each of the three months next preceding such election in two newspapers published in each county representing the two political parties polling the highest number of votes at the then last preceding general election and in one additional newspaper published in each county for every one hundred thousand people in such county as shown by the then last preceding federal or state enumeration. Such additional newspapers shall be selected by the secretary of state with reference to making such publication in newspapers having the largest circulation in the county in which they are published. If such resolution does not state that such proposed amendment is so referred to such legislature, the secretary of state shall publish, in connection with the publication of such

concurrent resolution, a statement that such amendment is referred to the legislature to be chosen at the next general election.

The secretary of state shall cause such proposed amendment to the constitution or other proposition or question, which is by law to be submitted to the voters of the state at a general or special election, to be published for a like period before such election in newspapers selected in like manner, together with a brief statement of the law or proceedings authorizing such submission, the fact that such submission will be made and the reading form in which it is to be submitted. If such proposed amendment or other proposition or question is to be submitted at a special election, to be held less than three months from the time of appointing it, the first publication in each newspaper shall be made as soon as practicable after such appointment, and shall continue once in each week to the time of the election.

**Derivation:** Election Law, § 7.

**Amended by** L. 1913, ch. 820, and L. 1914, ch. 244, in effect Apr. 8, 1914.

**Cross-references.**—Constitutional amendments to be agreed to by two successive Legislatures and published for three months. N. Y. Const., art. 14, § 1, (part 2, post). Laws creating debt to be submitted to people. N. Y. Const., art. 7, § 4 (part 2, post). Additional publication. County Law, § 20, and Legislative Law, § 48. See, also, note to Election Law, § 291.

**Designation of papers to publish concurrent resolutions.**—It seems that it was the legislative intent to leave the time of the selection and designation of newspapers to the secretary of state, provided, however, that the publication commence at least three months before the general election of senators. Rept. of Atty.-Genl. (11008) 160.

**Publication of election notices, etc.** Rept. of Atty.-Genl. June 24, 1909.

**Publication of resolution proposing amendments to the Constitution.** Rept. of Atty.-Genl., July 9, 1909.

## § 296. Creation, division and alteration of election districts.

Every town or ward of a city not subdivided into election districts shall be an election district. Except as otherwise provided in this section, the town board of every town containing more than five hundred voters and the common council of every city other than New York and Buffalo, in which there shall be a ward containing more than five hundred voters, shall, on or before the first day of July in each year, whenever necessary so to do, divide such town or ward respectively into election districts, to take effect on



the sixth Wednesday before the general election in such year, each of which shall be compact in form, wholly within the town or ward, and shall contain respectively as near as may be, four hundred voters. Such duty shall be performed in the counties of Monroe and Nueces by the commissioner of elections. No such ward or town shall be again divided into election districts until, at some general election, the number of votes cast in one or more districts thereof shall exceed four hundred and fifty; and in such case the redivision shall apply only to the town or ward in which such district is situated; provided, however, that in cities of the third class the common council, or other board or body charged with like duties, by resolution duly adopted at the time and to take effect as hereinbefore provided for the division of wards into election districts, may direct that wards in such city having five hundred and fifty voters or less shall not be divided but shall constitute one election district; or, that wards having five hundred voters or less, which have been divided into election districts pursuant to the foregoing provisions of this section, shall be consolidated into one election district. Such resolution shall fix and determine the polling place for such election district or consolidated districts and in all such cases it shall be the duty of the common council, or other board or body charged with like duties, to furnish such polling place with one booth for each seventy-five voters in such election district or consolidated districts, as shown by the last preceding registration of voters in such ward. If any part of a city shall be within a town, the town board shall divide into election districts only that part of the town which is outside of the city. No election district including any part of a city shall include any part of a town outside of a city.

A town or ward of a city containing less than five hundred voters, or an election district of a town containing less than four hundred voters may, in any year not later than the first day of July, be divided into election districts by the board or other body charged with such duty, to take effect on the sixth Wednesday before the general election in such year, when, in the judgment of such board or body, the convenience of the voters shall be promoted thereby. Upon the creation, division or alteration of an election district outside of a city, and on or before September first the town board shall appoint four inspectors of election for each election district so

created, divided or altered, to take effect on or before the first day of registration thereafter and not earlier than the sixth Wednesday before the next general election, who shall be equally divided between the two parties entitled to representation on boards of inspectors. If the creation, division or alteration of an election district is rendered necessary by the creation, division or alteration of a town, ward or city or rendered necessary or occasioned by the division of a county into assembly districts after a reapportionment by the legislature of members of assembly, such creation, division or alteration of an election district shall be made and shall take effect immediately; and inspectors of election for the new election district as so created, divided or altered shall be appointed, in the manner provided by law, a reasonable time before the next official primary or meeting for registration and such appointments shall take effect immediately. If a town shall include a city, or a portion of a city, only such election districts as are wholly outside of a city shall be deemed election districts of the town, except for the purpose of town meetings.

The board of elections of the city of New York and county of Erie shall divide the cities of New York and Buffalo, respectively, into election districts on or before the first day of July in any year whenever necessary so to do as herein provided, to take effect on the sixth Wednesday before the general election in such year. Each election district in the counties within the city of New York shall contain, so far as possible, four hundred and fifty voters, provided, however, that any election district containing less than two hundred and twenty-five voters, in such counties made necessary by the crossing of congressional lines with other political divisions, may be consolidated with a contiguous election district in any year when no representative in congress is to be voted for in such district. Such election districts so established in the city of New York shall not again be changed until at some general election the number of registered voters therein shall exceed six hundred, except where changes are made necessary by a change in the boundaries of congressional, senate, assembly, aldermanic or municipal court districts or ward lines, provided, however, that when the number of registered voters in an election district shall, in any year, be less than three hundred and fifty, such district may be consolidated with contiguous election dis-

tricts in the discretion of said board of elections. In the city of New York each election district shall be compact in form, entirely within an assembly district and numbered in consecutive order therein respectively. In the year of any decennial reapportionment the board of elections of the city of New York shall rearrange the election districts throughout the city within assembly district lines as constituted pursuant to such reapportionment, to conform as to the number of voters to the provisions of this section, which rearrangement shall take effect before the fall primary in that year, and the appointment of inspectors of election for such election district, as altered or newly created, shall be made and shall take effect a reasonable time before such primary.

No election district shall contain portions of two counties, or two senate or assembly districts.

**Derivation:** Election Law, § 8, as amended by L. 1897, ch. 379, § 3; L. 1900, ch. 648, § 1; L. 1901, ch. 95, § 3; L. 1903, ch. 41, § 1; L. 1905, ch. 643, § 3, and ch. 675, § 1; L. 1906, ch. 570, § 1; L. 1907, ch. 472, § 1.

**Amended by** L. 1914, ch. 244; L. 1916, ch. 337; L. 1917, ch. 703; L. 1918, ch. 323, in effect Apr. 24, 1918.

**Consolidators' note.**—Election Law, § 8, as amended by L. 1897, ch. 379, § 3; L. 1900, ch. 648, § 1; L. 1901, ch. 95, § 3; L. 1903, ch. 41, § 1; L. 1905, ch. 643, § 3, and ch. 675, § 1; L. 1906, ch. 570, § 1; L. 1907, ch. 472, § 1. A provision as to the bi-partisan character of the board similar in effect to that omitted from new section 419 is here changed in a similar manner and for this same reason.

**Cross-references.**—Division of towns into joint election districts for purpose of holding town meetings. See Town Law, § 65 (part 8, post). Number of voters in election district where voting machine is used. Election Law, § 419.

**Section is not mandatory** with reference to the date on which the alteration, division or creation shall be made. Report of Atty.-Gen. (1895), 215.

**Power of town to change election districts.** Report of Atty.-Gen. (1903), 412.

Where a town contains more than 400 registered voters it would be illegal for the town board to reduce the number of election districts to one. Report of Atty. Gen. (1894), 76.

**Effect of locating polling place outside of district.**—All that the Constitution required is that an elector must vote at the polling place designated by law for casting the vote of the district where he resides, and the validity of his vote is not affected by the fact that the place is located outside the boundary line of the district. People ex rel. Lardner v. Carson (1898), 155 N. Y. 491, aff'g 86 Hun 617, 33 N. Y. Supp. 1114.

**In general.**—As to apportionment of election districts, see Matter of Baird (1894), 142 N. Y. 523, aff'g 75 Hun 545, 27 N. Y. Supp. 525; Matter of Smith (1895), 90 Hun 568, 36 N. Y. Supp. 40, rev'd on another point 148 N. Y. 187.

**§ 296-a. Special provision as to election districts in certain congressional districts.**

If an election district be partly within and partly without either the seventh, eighth, twenty-first or twenty-second congressional districts, the board of elections of the city of New York, before the days fixed by law for revising and correcting registers for a special election called or to be called to elect representatives to congress therein before May first, of such year, shall divide such election district into two districts, each within the proper congressional district, or annex the part within any such congressional district to one or more adjoining election districts therein, to take effect immediately. Any election district so created, or to which a part of an election district is annexed, shall continue as an election district until changed pursuant to law. Appointments of inspectors for a new election district, if any, created pursuant to this section shall take effect immediately.

Added by L. 1918, ch. 8, in effect Feb. 10, 1910.

**§ 296-b. Readjustment of election districts in the year nineteen hundred and eighteen.**

Added by L. 1918, ch. 323, in effect Apr. 24, 1918. See Part I A, Special Provisions of Election Law for Year 1918, post, p. 206a.

**§ 297. Abolition, consolidation or changing of election districts in towns.**

If at a general election at which a governor is elected, the number of votes cast for governor in an election district in any town be less than two hundred, the town board of the town may, if such town contains two election districts, abolish the division of the town into election districts, or if the town contain more than two election districts, may annex the territory of such district to one or more of the other districts therein, in such manner as will best promote the convenience of the voters; but no district shall be abolished pursuant to this section if thereby in case of the abolition of election districts, the number of voters in the town will exceed five hundred, as indicated by the last preceding vote for governor or other available sources of information, or thereby in the case of the abolition of an election district and its annexation to one or more other districts, the number of voters in any new district so created will exceed four hundred, as so indicated. An

alteration of election districts, pursuant to this section, must be made on or before July first in any year, to take effect on the sixth Wednesday before the general election in such year. If the election districts in a town are abolished pursuant to this section, the town board shall, on or before September first, appoint from the inspectors of election in such town four inspectors of election for the town as an election district, to take effect on or before the first day of registration thereafter and not earlier than the sixth Wednesday preceding the next general election, who shall be equally divided between the two parties entitled to representation on boards of inspectors.

If a town has been divided into three or more election districts, and if at any general election at which a governor is elected, the number of votes cast for governor in any district in such town does not exceed two hundred, the town board of such town may on or before the first day of August succeeding, if it deems that the convenience of voters will be promoted thereby, divide such town into such number of election districts, to take effect on the sixth Wednesday before the next general election, as it deems desirable, or change the boundaries of the existing districts, in such manner that no district shall contain more than four hundred voters as indicated by the last preceding vote for governor or other available sources of information. If, in pursuance of this section, the boundaries of an election district in such town should be changed, or a new election district is created, by the consolidation of two or more districts or parts of districts, the town board shall on or before September first appoint for each such district so created, or changed, four inspectors of election, to take effect on or before the first day of registration thereafter and not earlier than the sixth Wednesday preceding the next general election, who shall be equally divided between the two parties entitled to representation on boards of inspectors. Such inspectors of election shall hold office until their successors are regularly appointed in such election districts, in pursuance of law.

Derivation: Election Law, § 9-a, as added by L. 1906, ch. 159, § 1, and § 4-b, as added by L. 1907, ch. 470, § 1.

Amended by L. 1914, ch. 244, L. 1916, ch. 537; L. 1918, ch. 323, in effect Apr. 24, 1918.

Consolidators' note — Two provisions as to the bi-partisan character of the board similar in effect to that omitted from new section 419 are here changed in a similar manner and for the same reason.



**§ 298. Maps and certificates of boundaries of election districts.**

When a ward of a city or an assembly district within a city shall be divided into two or more election districts, the officers or board creating, dividing or altering such election districts shall forthwith make a map or description of such division, defining it by known boundaries, and cause such map or description to be kept open for public inspection in the office of the city clerk, and cause one copy thereof to be posted not less than ten days prior to the first day of registration in each year at the last polling place of each former election district, or of each ward not previously divided into two or more election districts, which is affected by such alteration, division or creation of an election district or districts, and one copy thereof at each police station house in the ward or assembly district, and shall, prior to the first day of registration in each year, furnish copies of such map or description to the inspectors of election in each election district of such ward or assembly district; such maps to be posted in the place of registration and remain posted until the close of the general election. The remaining maps so printed shall be distributed in the discretion of said boards of elections, which shall have respectively the power to charge for each map a price not exceeding the cost of printing the same; and any moneys resulting from the sale thereof shall be paid to the comptroller of the city of New York or to the county treasurer of the county, in counties outside of the city of New York, for the benefit of the treasury of said city or county. The scale of such maps shall, so far as possible, be uniform and large enough to permit the printing of the street corner numbers of the block or blocks defining the extreme boundaries of each election district within or outside the lines of such block or blocks respectively; and such street corner numbers shall be printed in or outside such block lines upon said maps, so that the lowest and highest street numbers within the election district of every street bounding such election district shall be plainly shown thereon. The copies furnished to the inspectors of election shall have printed on each or affixed to each in some secure way the list of places designated pursuant to the next section as places at which the meetings for the registration of voters and the election shall be held during the year within such ward or assembly district.

The officers creating, dividing or altering an election district in



a town shall forthwith make a certificate or map thereof, exhibiting the districts so created, divided or altered, and their numbers respectively and file the same in the county clerk's office except in the county of Erie, and in the county of Erie in the office of the commissioner of elections, and a copy thereof in the town clerk's office, and cause copies of the same to be posted in at least five of the most public places in each election district of such town, and the county clerk or commissioner of elections as the case may be, shall, prior to every general election, furnish copies of such maps or certificates, to the inspectors of election in each election district of such town, provided such election district is not coterminous with the town lines.

Derivation: Election Law, § 9, as amended by L. 1902, ch. 89, § 1, L. 1905, ch. 643, § 1, L. 1906, ch. 642, § 1.

Amended by L. 1917, ch. 793, in effect June 1, 1917.

Maps are not confined to new districts only, but to all districts. Report of Atty. Gen. 1896, 227.

### § 299. Designation of places for registry and voting.

1. On the first Tuesday of September in each year, the town board of each town, and the common council of each city, except Buffalo, and the board of elections of the city of New York, shall designate the place in each election district in the city or town at which the meeting for the registration of voters and the election shall be held during the year; provided, however, that in a city the place so designated, if a schoolhouse or other public building, may be in a contiguous election district. In the city of Buffalo the board of elections of the county of Erie shall designate such places for registry and election on the first Monday in August in each year.

2. Each room so designated shall be of a reasonable size, sufficient to admit and comfortably accommodate at least ten voters at one time outside of the guard-rail, and such room must in addition be of sufficient size to allow of the placing of the booths, furniture and equipment of such polling place as provided in the election law.

3. A school-house or other public building shall be designated, if the use of the same as a registration and polling place shall not interfere with their customary use and if such school-house or other public building be so situated as to be convenient to the electors residing in the election district. The expense, if any, incidental to their use under such design-

nation shall be paid like the expense of other registration and polling places. Whenever a school or other public building is located in an election district and the registration and polling place of such district is not located in a school or other public building, a statement of the reason for not designating such a building must be entered by the board or officer charged with the duty of making such designations in the minutes or other record making the designation.

4. No building or part of a building, shall be so designated in any city, if within thirty days before such designation, intoxicating liquors, ale or beer, shall have been sold in any part thereof. No room shall be designated elsewhere than in a city, if within thirty days before such designation, intoxicating liquors, ale or beer, shall have been sold in such rooms, or in a room adjoining thereto, with a door or passageway between the two rooms.

5. In the event that the registration shall be so large that the polling place already designated would be unreasonably crowded on election day, the board of elections may between the last day of registration and election day change the polling place so as to obtain a larger room. If for any reason said board of elections changes a polling place said change must be made at least ten days before the day of election and at least five days before election day said board must send a written notice to each registered voter, notifying him of such change in the location of said polling place.

6. No intoxicating liquors, ale or beer shall be sold in such building in a city or such room or adjoining room elsewhere after such designation and before the general election next thereafter, or be allowed in any room in which a meeting of inspectors for the election district is held for the registration of electors thereof or in which an election is held during any day of registration or election or canvass of the votes. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor.

7. If any place so designated shall thereafter and before the close of the election be destroyed, or for any reason become unfit for use, or can not for any reason be used for such purpose, the officers charged with the designation of a place for such election shall forthwith designate some other suitable place for holding such election. Not more than one polling place shall be in the same room, and not more than two polling places shall be in the same building, except if any city, town or village owns or occupies a building suitable for holding an election there may be as many polling places located in such building as there are rooms which are separated by permanent partitions.

**Derivation:** Election Law, pt. of § 10, as amended by L. 1887, ch. 370, § 4; L. 1901, ch. 95, § 4; L. 1903, ch. 197, § 1; L. 1904, ch. 249, § 1; L. 1905, ch. 643, § 5; L. 1906, ch. 259, § 1.

**Amended by** L. 1910, ch. 424; L. 1915, ch. 678; L. 1916, ch. 587; L. 1918, ch. 823; L. 1920, chs. 44, 103; L. 1921, ch. 319, in effect April 22, 1921.

**Cross-references.**—Local bills designating places of voting not to be passed by legislature. N. Y. Constitution, art. 3, § 18 (part 2, post). Liquor selling within one-quarter of a mile of any voting place is unlawful. Liquor Tax Law, § 50.

**Polling place outside of district.** The word "elsewhere" in the constitutional provision that an elector must vote "in the election district of which he shall at the time be a resident, and not elsewhere," means some other election district polling place than that for the election district in which the voter resides. *People ex rel. Lardner v. Carson* (1898), 155 N. Y. 491, aff'g 10 Misc. 237, 30 N. Y. Supp. 817, 801 Hun 617.

The designation under legislative authority of a polling place in a city for a town outside the city, at which residents of the town only and not residents of the city are allowed to vote, is not prohibited by the constitutional provision that an elector must vote "in the election district of which he shall at the time be a resident, and not elsewhere." *People ex rel. Lardner v. Carson* (1898), 155 N. Y. 491, aff'g 80 Hun 617, which aff'd 10 Misc. 237, 30 N. Y. Supp. 817.

**Construction of section by attorney-general.**—When town board has neglected to designate polling places within time specified by law, such designation may be made subsequently. Report of Atty.-Gen. (1896), 231.

Election may be held in a room formerly used as a political club-room. Report of Atty.-Gen. (1896), 231.

The place for registration and for election must be within the borders of the election district. Report of Atty.-Gen. (1897), 265.

Burning of the building in which the election is being held does not per se vitiate the election. Report of Atty.-Gen. (1893), 280.

The fact that a room designated for polling place and the bar room are on different floors does not avoid the prohibition of this section where it clearly appears that there is a passageway between the room designated and the bar-room. Repl. of Atty.-Gen. (1908), 632.

### § 300. Equipment of polling places.

The officers authorized to designate such places in any town or city shall provide for each polling place at such election, the necessary ballot and other boxes, guard-rails, voting booths and supplies therein, and the other furniture of such polling place, necessary for the lawful conduct of each election thereat, shall preserve the same when not in use, and shall deliver all such ballot and other boxes for each polling place, with the keys thereof, to the inspectors of each election district at least one-half hour before the opening of the polls at each election.

**Derivation:** Election Law, pt. of § 10, as amended by L. 1897, ch. 379, § 4; L. 1901, ch. 95, § 4; L. 1903, ch. 197, § 1; L. 1904, ch. 249, § 1; L. 1905, ch. 643, § 5; L. 1906, ch. 259, § 1.

Cross-references.—Officers providing ballots and stationery. Election Law, § 341. Supplies where ballot machines are used. Election Law, §§ 325-329. Instruction cards and markers not to be taken down, torn or defaced. Election Law, § 350. Penalty for removal, mutilation or destruction of election books, supplies, poll lists or cards of instruction. Penal Law, § 758 (part 5, post). Removal, mutilation, etc., of public copy of registration. Election Law, § 181.

Supplies referred to in this section mean such articles as are not required to be furnished by the county clerk. Report of Atty.-Gen. (1896), 227.

### § 300-a. Display of American flag.

The American flag shall be displayed in each polling place in this state by the board of inspectors during the hours when such boards are in session. The board, body or officer now charged with the duty of defraying the expenses of conducting primaries and elections shall furnish said flag, which shall be approximately three feet by five feet in size.

Added by L. 1913, ch. 783. In effect May 31, 1913.

### § 301. Publication of list of registration and polling places.

The officers authorized to designate the registration and polling places in any city, except the city of New York, shall cause to be published in two newspapers within such city a list of such places so designated, and the boundaries of each election district in which such registration and polling place is located. Such a list shall also be filed by such officers with the state superintendent of elections at least five days prior to the first day of registration. Such publication shall be made in the newspapers so selected upon each day of registration and the day of election, except that if such newspaper be an evening newspaper it shall be made on the day prior to each of such days. One of such newspapers so selected shall be one which supports the candidates nominated that year by the political party polling the highest number of votes in the state at the last preceding election for governor, and the other newspaper so designated shall be one which supports the candidates nominated that year by the political party polling the next highest number of votes for governor at said election.

The board of elections of the city of New York shall cause to be published in two newspapers in each borough within such city a list of the registration and polling places so designated in each borough and the boundaries of each election district therein in

which such registration and polling place is located and shall at the same time file said list with the state superintendent of elections; except that in the borough of Brooklyn, such publication shall be made in the newspapers designated to publish corporation notices therein and in one daily newspaper published in the Jewish language; and except also that in the borough of the Bronx such publication shall be made in four newspapers published in the borough of the Bronx; and except also that in the borough of Manhattan such publication shall be made in five daily newspapers published in the borough of Manhattan which support the candidates nominated that year by the political party polling the highest number of votes in the state at the last preceding election for governor, and also in five daily newspapers published in the borough of Manhattan which support the candidates nominated that year by the political party polling the next highest number of votes for governor at said election, one of which newspapers may be a daily newspaper published in the German language and two of which newspapers may be daily newspapers published in the Jewish language; which publication shall include the list of such registration and polling places and their boundaries, in the respective counties in which the newspapers are published. Such publication shall be made in such newspapers upon each day of registration and the day of election excepting if such newspaper be an evening newspaper it shall be made on the day prior to each of such days or if such day be Sunday, on the preceding Saturday. Such publication shall be made in newspapers published in such boroughs which shall respectively support the candidates nominated that year by the political parties which at the last preceding election for governor respectively cast the largest and next largest number of votes in the state for such office.

The said board shall also cause to be published in the City Record on or before the first day of registration in each year a complete list of all the registration and polling places so designated and the boundaries of the election districts in which such places are located arranged in numerical order under the designation of the respective boroughs in which they are located.

In selecting the newspapers in which such publications are to be made the said board shall keep in view the object of giving the widest publicity thereto.

**Derivation:** Election Law, pt. of § 19, as amended by L. 1887, ch. 379, § 4; L. 1891, ch. 95, § 4; L. 1903, ch. 197, § 1; L. 1904, ch. 249, § 1; L. 1905, ch. 642, § 5; L. 1906, ch. 272, § 1.

**Amended by** L. 1913 ch. 587; L. 1914, ch. 238; L. 1916 ch. 537; L. 1918, ch. 323, in effect Apr. 24, 1918.

**Expense of publication.**—The rate of compensation fixed by section 3317 of the Code of Civil Procedure for the publication of certain legal advertisements does not govern compensation for the publication of notices under the Election Law relative to the places of registration and election in election districts and the boundaries of said districts. *Mack v. City of Buffalo* (1900), 32 Misc. 330, 66 N. Y. Supp. 670.

**Designation of newspapers.**—When the board of elections of New York city has, pursuant to a peremptory mandamus, rescinded a resolution authorizing the publication of a list of registration and polling places in certain newspapers and has designated certain other papers as newspapers advocating Democratic candidates and Democratic principles, and such publication has in fact been made in the latter papers, an appeal by such board from the original order directing the writ of mandamus should be dismissed. *People ex rel Quinn v. Voorhis* (1906), 115 App. Div. 118, 100 N. Y. Supp. 717, rev'd 180 N. Y. 283.

This section prescribes no test in the selection and appointment of newspapers to publish the list of the registration and polling places in the borough of Manhattan, except that they shall advocate the principles of the two political parties polling the highest number of votes at the last preceding election for governor, and therefore the courts have no power to grant a peremptory writ of mandamus requiring the board of elections to publish the list in four newspapers which support the candidates nominated and the platform adopted at a certain convention held by one of the parties designated in the statute. *People ex rel Quinn v. Voorhis* (1907), 187 N. Y. 327, aff'g 115 App. Div. 218, 100 N. Y. Supp. 927.

The statutory duty of the board of elections to designate newspapers within the city of New York to publish the list of registration and polling places and the boundaries of election districts, is continuous, and there is no provision in the statute authorizing the board to make a contract for the completed publications which would restrict the power of the board to change the newspapers after one or more publication had been made. *Morning Telegraph Co. v. The City of New York* (1909), 132 App. Div. 634, 117 N. Y. Supp. 496, aff'g 61 Misc. 111, 115 N. Y. Supp. 549.

Where the board of elections designated certain newspapers, advocating the principles of the Democratic party, to publish such notices, and after the publication of the notices by such newspapers for two days, the board, acting under a mandamus erroneously granted, rescinded its resolution and appointed other newspapers, this action of the board, although subsequently annulled upon the reversal of the judgment in the mandamus proceeding, is a legal authorization for the publication of the notices by the papers named in the second resolution, and the costs thereof are a charge on the city of New York under sections 11 and 18 of the election law. *Morning Telegraph Co. v. The City of New York* (1909), 132 App. Div. 634, 117 N. Y. Supp. 496, aff'g 61 Misc. 111, 115 N. Y. Supp. 549.



**§ 301-a. Publication of list of registration and polling places in certain towns.**

The town board in any town in a county having a population of more than three hundred thousand according to the last federal or state census or enumeration, adjoining a city of the first class having a population of one million and upwards, may cause to be published in such a newspaper, or newspapers, as the town board may designate, a list of the places of registration within such town with a statement of the days and hours of registration, together with a brief description of the boundaries of each election district in which such registration is had, and such publication shall be made within one week next preceding the first day of registration and on the same day of the succeeding week. Such town board may also cause to be published in such a newspaper or newspapers, as it may designate, an election notice which shall include a list of the polling places, the date and hours of election and at the discretion of such town board a brief description of the boundaries of each election district and such publication shall be made on the publication day immediately preceding such election day. The amount to be paid for any of such publications shall be at the rate per folio of seventy-five cents for the first insertion and fifty cents for each subsequent insertion, and if any such publications are printed in type larger than agate, the amount to be paid for making such publication shall not exceed the amount that would be paid if such publication had been set in agate thirty ems to the line, and in no publication, however, shall any type smaller than agate be used. The amount to be paid for all such publications shall be a town charge.

Added by L. 1918, ch. 641, in effect May 13, 1918.

**§ 302. Election officers; designation, number and qualifications.**

There shall be in every election district of the state, outside of a city of over one million inhabitants, the following election officers, namely, four inspectors and two general clerks, whose term of office, except as hereinafter prescribed, shall be for one year from the date of their appointment or election, and who shall serve at every general, special or other election held within their districts during such term. The term of office of inspectors of election in towns shall be for two years.

In a city of over one million inhabitants, there shall be in every election district four inspectors, two ballot clerks and two poll clerks, to serve at every such election during the taking of the vote and until relieved as hereinafter provided, and four additional inspectors, who shall serve at every such election after the closing of the polls and until the canvass is completed and returns thereof made as provided by law. Such additional inspectors shall be designated in the appointment as canvassing inspectors, and the same person shall not be eligible to serve, under an original appointment or vacancy appointment, at both the taking and canvassing of the vote. Such canvassing inspectors, at the closing of the polls, shall take the place of the inspectors, poll clerks and ballot clerks who have served prior thereto, except as otherwise provided in section three hundred and sixty-six-a.

No person shall be appointed or elected an inspector of election, poll clerk, ballot clerk or general clerk, who is not a qualified voter of the county, if within the city of New York, or of the city, if in any other city, or of the election district of the town in which he is to serve, of good character, able to speak and read the English language understandingly, and to write it legibly, and who does not possess a general knowledge of the duties of the office to which he is elected or appointed, or who is a candidate for any office to be voted for by the voters of the district in which he is to serve, or who has been convicted of a felony and not restored to citizenship, or who holds any public office except that of notary public or commissioner of deeds, town or village assessor, justice of the peace, police justice of a village, village trustee, water commissioner, officer of a school district, or overseer of highways, whether elected or appointed, or who is employed in any public office or by any public officer whose services are paid for out of the public money other than is excepted herein.

Each class of such officers shall be equally divided between the two political parties which at the general election next preceding that for which such officers are to serve, cast the highest and the next highest number of votes. The canvassing inspectors, in a city of over one million inhabitants, shall be so equally divided between such parties. Where election officers are appointed the

qualifications required of them by this section shall be determined by an examination as provided in this chapter.

**Derivation:** Election Law, § 11, subd. 1, as amended by L. 1897, ch. 410, § 1; L. 1898, ch. 335, § 2; L. 1899, ch. 630, § 1; L. 1901, ch. 95, § 5; L. 1901, ch. 538, § 1.

**Amended by** L. 1914, ch. 239; L. 1918, ch. 323; L. 1919, ch. 504, in effect May 9, 1919.

**Consolidators' note**—Until L. 1901, ch. 95, the matter in subdivision 1 constituted the whole section. That act added a new subdivision 2 creating the board of elections in New York city and also corrected a defective expression in subdivision 1 that had been put in by L. 1899, ch. 630, which had provided that no inspector, etc., should be appointed "who is not a qualified elector of the county, if within the city of New York or of any other city or of the election district of the town in which he is to serve." L. 1901, ch. 95, had corrected this by making "or of any other city" read "or of the city or of any other city;" but chapter 538 (the succeeding and last amendment) followed the previous amendment (the draftsman presumably being ignorant of chapter 95) and revised the defect, at the same time wholly neglecting to recognize that the matter amended had become subdivision 1, and referring to it as "section eleven," and likewise ignoring the new subdivision 2. The defective expression is here cured again.

**Cross-references.**—Similar provisions as to qualifications. Public Officers Law, § 3 (part 6, post); Town Law, § 81 (part 8, post); Village Law, § 45 (part 9, post). In partisan election boards. N. Y. Constitution, art. 2, § 6 (part 2, post). Oath of office. Election Law, §§ 307, 357. Public Officers Law, § 14 (part 6, post). N. Y. Constitution, art. 13 (part 2, post). Failure to file oath. Public Officers Law, §§ 43, 50 (part 6, post). Penal Law, § 1820. Failure to file on official acts. Public Officers Law, § 15 (part 6, post). Penal Law, § 1821. Compensation for attendance at elections, etc. Election Law, § 310. Persons serving temporarily as inspectors of election serve without pay. Election Law, § 313. Exempt from civil service examinations and tests. Civil Service Law, § 9. Exempt from jury duty. Election Law, § 309. No ballot clerks where machines are adopted. Election Law, § 414. Acting as election officer without being qualified, etc. Penal Law, § 764 (part 5, post). Misconduct by election officers. Penal Law, § 762 (part 5, post).

**Compensation of election officers in towns**—If a different rate is not otherwise established as herein provided, each inspector of election, ballot clerk and poll clerk is entitled to two dollars per day, but the board of supervisors may establish in their county a higher rate, not exceeding six dollars per day. Town Law, § 85.

**Inspectors**—Where the inspectors who opened the polls in the morning are not regularly sworn, and have been appointed by less than the required number of town officers, such appointment is, nevertheless, a colorable authority for them, and their acts as inspectors de facto are valid so far as third persons are concerned. *People v Cook* (1853), 8 N. Y. 67, aff'g 14 Barb. 250.

Yet such defective appointment does not displace the elected inspectors who.

on appearing at the polls, have a right as inspectors de jure to take charge of the election and make the returns. *People v. Cook* (1853), 8 N. Y. 67, affg 14 Barb. 259.

An omission by the inspectors of election to comply with such statutory requirements as are directory and not jurisdictional does not per se invalidate the votes cast in the district though the inspectors might be punished for their omission by indictment. *People v. Cook* (1853), 8 N. Y. 67, affg 14 Barb. 259.

Where the oath was irregularly administered to the inspectors of election who were, however, ignorant of the fact, the oath was held valid and the election not vitiated. *People v. Cook* (1853) 8 N. Y. 67, affg 14 Barb. 259.

The county canvassers have no right to reject the certificate of a board of inspectors regular on its face and presented to them in time. *People v. Cook* (1853), 8 N. Y. 67, affg 14 Barb. 259.

**Division of election officers between political parties.**—The provision of this section, that inspectors in election districts shall be equally divided between the two political parties which at the general election next preceding that for which such officers are to serve cast the highest and the next highest number of votes refers to the highest and next highest number of votes in the State. *Matter of Knollin* (1908), 59 Misc. 373, 112 N. Y. Supp. 332, aff'd 129 App. Div. 908, 106 N. Y. 528.

**Acts of election officers not reviewable by certiorari.**—Inspectors of elections are simply ministerial officers, their acts and conduct cannot be reviewed by certiorari. *People ex rel. Brooks v. Bush* (1897), 22 App. Div. 363, 48 N. Y. Supp. 13, and cases there cited. See also *People ex rel. Stapleton v. Bell* (1890), 119 N. Y. 175.

**Opinions of attorney-general as to election officers.**—An elector, resident of a city, who is otherwise qualified, may serve as an inspector, poll clerk or ballot clerk in a district of the city other than that in which he resides. *Report of Atty.-Gen.* (1896), 229.

Ballot clerks and poll clerks are election officers. *Report of Atty.-Gen.* (1896), 230.

Candidates for office cannot serve as election officers. *Report of Atty.-Gen.* (1901), 298, (1903), 463, (1905), 533.

This section does not apply to a person who is employed by a public officer in a private capacity, clerk in store, coachman, gardener, etc. *Report of Atty. Gen.* (1896) 221.

Inspectors, employees of public officer ineligible. *Report of Atty Gen.* (1899), 323.

An inspector of election in a town or village may accept the office of village clerk. *Report of Atty.-Gen.* (1898), 261.

A deputy sheriff is a public officer within the meaning of this section. *Report of Atty. Gen.* (1897) 246.

A postmaster is a public officer. *Report of Atty.-Gen.* (1897) 247.  
This provision extends to persons holding office under the laws of the United States as postmaster. It is not retroactive. *Report of Atty.-Gen.* (1896) 226.

Post clerks in towns hold office for two years. Report of Atty.-Gen. (1902), 211.

An irregularity in the appointment of inspectors will not invalidate the election at which they officiate. Report of Atty.-Gen. (1895), 253.

A person appointed to the office of inspector of election, who is later chosen to and serves in the office of village treasurer, may perform the duties of inspector of election while holding the other office. Report of Atty.-Gen. (1911), vol. 2, p. 451.

### § 302-a. Powers and duties of canvassing inspectors limited, in a city of over one million inhabitants.

The powers and duties of the additional inspectors, designated as canvassing inspectors, in a city of over one million inhabitants are those prescribed in sections three hundred and two and three hundred and sixty-six-a. Inspectors to conduct the registration of electors or to constitute a board of primary inspectors shall not include such canvassing inspectors; and any provision of this chapter conferring a power or imposing a duty on the inspectors of election or any of them or the board of inspectors of any election district, except the powers and duties prescribed by the sections referred to above, shall be deemed to mean and refer to inspectors of election and boards of election other than such additional canvassing inspectors. A person appointed as a canvassing inspector, however, shall be eligible to fill a vacancy in the regular board of inspectors upon a day of registration or in the board of primary inspectors, occurring on a day of registration or primary election. The provisions of section seventy of this chapter, applying the procedure at a general election to official primaries, shall not be deemed to mean that a separate or additional board of canvassers shall take the place of the primary inspectors who serve during the taking of the vote. Such primary inspectors shall have charge of not only the taking but the canvass and return of the vote.

Added by L. 1918, ch. 322, in effect Apr. 24, 1918.

### § 303. Appointment of election officers in cities.

The board of elections of the city of New York and the mayor of each other city shall, on or before the first day of September of each year, select and appoint election officers for each election district therein, and may fill any vacancy which may occur before the opening of the polls on election day.

Each political party entitled to representation in any board of election officers may, not later than the first day of July in each year, file with such board or mayor an original list of persons, members of such party duly qualified to serve as election officers. A supplemental list of persons may also be filed containing not more than ten names for each office. Additional supplemental lists for any election district may be filed at any time before the appointments for such districts are made and certified by such board or mayor or when a vacancy shall exist in the original list by reason of the disqualification, resignation, declination, or withdrawal of the name by the person or persons submitting the same, of any person on such list, and all appointments shall be made from the original list if those named therein are found qualified; if not so qualified, then from a supplemental list so filed. If within ten days after notice in writing by the board or mayor to the chairman of the committee or other person by whom the list is filed or authenticated, such chairman or other person shall neglect to file an additional list, the board or mayor may appoint qualified persons, members of the party in default, to act as election officers.

**Derivation:** Election Law, pt. of § 12, as amended by L. 1897, ch. 372, § 3, L. 1898, ch. 675, § 1, L. 1899, ch. 830, § 2; L. 1901, ch. 95, § 6, L. 1904, ch. 70, § 1.

**Cross-references.**—See note to preceding section.

**Election officers must be selected from state parties.**—No local faction or organization is in and of a party and entitled to representation in the election officers unless it is recognized by and thus actually in and of the state party organization. *People v. Gleason* (1896), 18 Misc. 511, 76 N. Y. St. Rep. 1081, 42 N. Y. Supp. 1084.

The choosing of election officers from an irregular local organization in disregard of lists filed and authenticated by the regular local organization is a violation of the Election Law. *People v. Gleason* (1896), 18 Misc. 511, 76 N. Y. St. Rep. 1081, 42 N. Y. Supp. 1084.

**Selection from two dominant parties.**—Only the two dominant political parties must be taken into consideration in choosing election boards, with regard to subordinate factions. *People ex rel Van Wyck v. Wheeler* (1879), 18 Hun 549.

**Failure to appoint inspectors.**—The failure to appoint inspectors within the time prescribed by law will not render subsequent appointments invalid in the absence of any statutory prohibition to that effect. *People ex rel M. Mackin v. Board of Police* (1887), 46 Hun 296, aff'd 107 N. Y. 235.

**Failure of officers to take oath.**—An election is not vitiated if inspectors or clerks fail to take oath, though such failure may be punished by indictment. *People v. Cook* (1853), 8 N. Y. 84.



**Appointment of election officers in New York county.**—The power to select election officers in the county of New York rests in the county committee of the party, whose action is to be authenticated by the chairman of its executive committee, and where the power is so exercised and authenticated, the court will not consider a claim that a recommendation of a committee of an assembly district to the county committee was disregarded, although the recommendations of committees of other assembly districts were adopted. *Sheehan v. McMahon* (1890), 44 App. Div. 63, 60 N. Y. Supp. 452, aff'g 28 Misc. 733, 59 N. Y. Supp. 969.

See also *People ex rel. Hayes v. MacLean* (1890), 25 Abb. N. C. 466, 12 N. Y. Supp. 521; *People ex rel. Smith v. Hasbrouck* (1878), 54 How. Pr. 418.

### § 304. Authentication of party lists.

In the city of New York such lists shall be authenticated and filed by the chairman of the county committee of the party in the respective counties within such city; in other cities, by the chairman or secretary of the general city committee of such party, if there be such a committee, or if not, then by the chairman or secretary of the general county committee of such party, if there be such a committee, or if not, then by the corresponding officer of any committee performing the usual functions of a city or county committee; provided, however, that if in any city more than one such list be submitted in the name or on behalf of the same political party, only that list can be accepted which is authenticated by the proper officer or officers of the faction or section of such party, which was recognized as regular by the last preceding state convention of such party; or, where no such convention has been held within the year, by the proper officer of the faction or section of said party which at the time of the filing of said list is recognized as regular by the state committee of such party which was organized by or pursuant to the direction of the last preceding state convention of such party.

**Derivation:** Election Law, pt. of § 12, as amended by L. 1897, ch. 379, § 5; L. 1898, ch. 676, § 1; L. 1899, ch. 630, § 2; L. 1901, ch. 95, § 6; L. 1904, ch. 70, § 1. Amended by L. 1915, ch. 678, in effect May 22, 1916.

**Construction of section.**—This section must be construed in the light of section 9 of the Primary Election Law (now Election Law, § 64), providing that each county or city committee and the officers thereof shall have all the power and authority, and shall perform all the duties in respect to the nominations of officials to serve at general elections conferred upon the general committee, the county committee, the State committee and the exec-

sive committee or officers thereof given to any party in the said city or county by this section. *People ex rel McCarran v. Dooling* (1908), 128 App. Div. 1, 112 N. Y. Supp. 71, rev'g 60 Misc. 132, 112 N. Y. Supp. 67, aff'd 193 N. Y. 604.

Although section 12 (now § 304) of the Election Law as originally enacted in 1896 contained a proviso that, if more than one list of election officers be submitted in the name of the same political party, only that list can be accepted which is authenticated by the proper officers of the faction which was organized as regular by the last preceding state convention of such party and although said proviso was permitted to remain in the subsequent amendments to such section, nevertheless, on the enactment of the Primary Law in 1899, which expressly repealed all acts or parts of acts inconsistent therewith, the said proviso was repealed as otherwise the Primary Law would have been rendered nugatory. *People ex rel McCarran v. Dooling* (1908), 128 App. Div. 1, 112 N. Y. Supp. 71, rev'g 60 Misc. 132, 112 N. Y. Supp. 67, aff'd 193 N. Y. 604.

A "faction or section" of a political party cannot file a list of election officers merely because it has been recognized as regular by the state convention, if in fact the list was not filed by the chairman of any executive committee of a county committee constituted or attempted to be constituted by election at the primary election on the annual primary day. *People ex rel McCarran v. Dooling* (1908), 128 App. Div. 1, 112 N. Y. Supp. 71, rev'g 60 Misc. 132, 112 N. Y. Supp. 67, aff'd 193 N. Y. 604.

The recognition of a faction as regular by the state convention does not ipso facto absolve that body from compliance with the Primary Law in constituting its committees. A faction stamped as regular has no prerogative above the law and must be regular in its observation of the law as well as in its recognition by the state convention. *People ex rel McCarran v. Dooling* (1908), 128 App. Div. 1, 112 N. Y. Supp. 71, rev'g 60 Misc. 132, 112 N. Y. Supp. 67, aff'd 193 N. Y. 604.

Where an alleged committee of a faction of a political party was not voted for and made no contest for election as county committeeman at the previous primaries, no "faction, group or section" within the meaning of the Election Law is created or exists for the purpose of presenting the matter to the state convention to give it jurisdiction. *People ex rel McCarran v. Dooling* (1908), 128 App. Div. 1, 112 N. Y. Supp. 71, rev'g 60 Misc. 132, 112 N. Y. Supp. 67, aff'd 193 N. Y. 604.

**Selection of election officers in New York county.**—The power to select election officers in the county of New York rests in the county committee of the party, whose action is to be authenticated by the chairman of its executive committee and where the power is so exercised and authenticated the court will not consider a claim that a recommendation of a committee of an assembly district, to the county committee, was disregarded, although the recommendations of committees of other assembly districts were adopted. *Matter of Stebban v. McMahon* (1899), 44 App. Div. 63, 94 N. Y. St. Rep. 452, 60 N. Y. Supp. 452, aff'g 28 Misc. 733, 59 N. Y. Supp. 980.

**§ 305. Examination as to qualifications.**

All persons so proposed on behalf of any party for appointment shall be examined as to their possessing the qualifications required by section three hundred and two of this chapter. If the appointing power be the board or commissioner of elections, such examination shall be made by such board or commissioner. If the appointing power be the mayor, such examination shall be made by the board of elections, as defined by section three, of the county in which the city is located. Appointments by a mayor shall be subject to the determination of such board of elections as to the qualifications of the persons appointed. Upon making his appointments from party lists the mayor shall certify the names of the persons appointed to the board of elections, accompanied with the name and address of each chairman of a committee or other person by whom each party list was authenticated. The board or officer conducting any examination under this section shall give five days' notice in writing of such examination to the person to be examined, and also the chairman of the committee or other person by whom the list is filed and authenticated, and such chairman or other person may appear and be heard at such examination, either in person or by counsel. When the appointing and examining authority is the same board or officer, if a person so nominated after examination is found qualified, under section three hundred and two of this chapter, he shall be appointed to the position for which he was recommended. When the appointing and examining authority is the same board or officer, if a person so proposed is found disqualified after examination, notice in writing to that effect shall be given by the board or other examining and appointing officer within three days after such disqualification is determined, to the chairman of the committee or other person by whom the list embracing the name of the person so disqualified was authenticated, and the vacancy shall be filled by the appointment of a qualified person named in a supplemental list filed on behalf of the same party, except that if a party entitled to representation files no list the appointment may be made without such list, as provided in section three hundred and three, after examination. Where appointments shall have been made by the mayor and certified to the

board of elections, such appointments shall be absolute as to persons found qualified by the board of elections. If a person so appointed shall be found by such board to be disqualified, the board of elections shall forthwith give notice thereof to the mayor who shall, within three days thereafter, give notice in writing to that effect to the chairman of the committee or other person by whom the list embracing the name of the person so disqualified was authenticated, and a vacancy shall be deemed to exist therein to be filled by the mayor by the appointment, subject to examination by the board of elections, of a person named in a supplemental list filed on behalf of the same party, or of a person who is a member of such party if no list be filed. If a person recommended shall have served as an election official at any previous election, it shall not be necessary for him to be examined.

Derivation: Election Law, pt. of § 12, as amended by L. 1897, ch. 379, § 5; L. 1898, ch. 675, § 1; L. 1899, ch. 630, § 2; L. 1901, ch. 95, § 6. L. 1904, ch. 70, § 1.

Amended by L. 1911, ch. 649, L. 1918, ch. 323, in effect Apr. 24, 1918

### § 306. Party selection in the city of New York.

In the city of New York the members of the board charged with the duty of appointing election officers, who represent the same political party, shall have the exclusive right and be charged with the exclusive duty of selecting from the list submitted, or, in lieu of said list, the members of such party who are to be appointed as election officers.

Derivation: Election Law, pt. of § 12, as amended by L. 1897, ch. 379, § 5; L. 1898, ch. 675, § 1; L. 1899, ch. 630, § 2; L. 1901, ch. 95, § 6. L. 1904, ch. 70, § 1.

### § 307. Oath of office; certificate of appointment.

Every person so appointed as an election officer shall, within five days after notice of his appointment, take and subscribe the constitutional and statutory oath of office, which shall be administered, if in the city of New York, by a commissioner of elections, or by any clerk or other employee of said board of elections who shall be designated by said board in writing over the signature of its president to administer said oath of office, and if in any other city, by

the mayor thereof or by any other person or persons designated by him for that purpose; and all of said officers, and all clerks or persons so designated by them or him for that purpose, shall be and are hereby authorized and empowered to administer such oath.

Every person so sworn as an election officer shall receive a certificate of appointment and qualification, signed by the person who administered the oath, in such form as may be approved by the board or mayor by which or whom he was appointed, and specifying the capacity and the election district in which he is to serve and the date of the expiration of his term of office.

*Derivation:* Election Law, pt. of § 12, as amended by L. 1897, ch. 379, § 5; L. 1898, ch. 675, § 1; L. 1899, ch. 630, § 2; L. 1901, ch. 25, § 6; L. 1904, ch. 70, § 1.

*Cross-references.*—As to oath to be taken by election officers before opening of polls on election day, see Election Law, § 357. See also note to Election Law, § 302.

*Forms.*—As to form of oath of office, see Forms (part 12, post).

### § 308. Removals; vacancies; transfers.

Any election officer so appointed may be removed for cause by the board or mayor making the appointment, in which case such removal, unless made while such officer is actually on duty on the day of registration, revision of registration or election, and for improper conduct as election officer, shall only be made after notice in writing to the officer to be removed, which notice shall set forth clearly and distinctly the reasons for his removal. Neglect to attend to the duties of the office shall be a cause for the removal of any such officer. In cities of the first class, it shall be the duty of the board or mayor making the appointment of an election officer, to remove forthwith such officer, without preferring any charges and without notice to such officer, upon the written request of the official of the political party who certified the name of such election officer or his successor. All such vacancies so created shall be filled in the same manner as the original appointment was made. Any election officer who shall at any time be appointed to fill a vacancy, which fact shall be stated in his certificate of appointment, shall hold office only during the unexpired term of his predecessor.

No election officer shall be transferred from one election district to another after he has entered upon the performance of his duties and no election officer shall serve in any county save that in which he shall reside.

**Derivation:** Election Law, pt. of § 12 as amended by L. 1897, ch. 37, § 5; L. 1898, ch. 675, § 1; L. 1899, ch. 630, § 2; L. 1901, ch. 96, § 6; L. 1904, ch. 70, § 1.

**Amended by** L. 1918, ch. 323, in effect Apr. 24, 1918.

**Consolidators' note.** - The provisions regarding penalties which in the original section appear between the two paragraphs of this section are here made § 310.

### § 309. Certificates of service; exemption from jury duty; payment.

The chairman of each board of inspectors of each election district shall, within twenty-four hours of any election, furnish to the mayor or board appointing such officers, if required so to do by such mayor or board, under his hand, a certificate stating the number of days of actual service of each member of such board, the names of the persons who served as poll clerks and ballot clerks on election day and the number of days during which the store, building or room hired for registration and election purposes was actually used for such purposes. Any person acting as such chairman, who shall wilfully make a false certificate, shall be guilty of a misdemeanor.

All persons appointed and serving as election officers on any of the days of registration or of election or of count of votes in cities of the first class shall be exempt from jury duty for one year from the date of the general election at which they serve. Such officers shall be paid by the comptroller of the respective cities within twenty days after the election at which such officers served, upon the certificate of the board or mayor appointing them.

If a person recommended and examined for appointment as election officer in a city, or examined therefor without recommendation in the absence of a party list, as provided in section three hundred and five, be found disqualified and be not appointed, as therein provided, and such person shall serve in the same calendar year as inspector at a registration or election or



as poll-clerk or ballot clerk at an election, under a vacancy appointment provided for in section three hundred and thirteen, he shall receive no compensation for such services.

**Derivation:** Election Law, pt. of § 12, as amended by L. 1897, ch. 379, § 5; L. 1898, ch. 675, § 1; L. 1899, ch. 630, § 2; L. 1901, ch. 95, § 6; L. 1904, ch. 70, § 1.

**Amended by** L. 1918, ch. 323, in effect Apr. 24, 1918.

**Forma.**—Form for chairman's certificate. See Forms (part 12, post).

### § 310. Special penalties.

Every person appointed as an election officer, failing to take and subscribe the oath of office as hereinbefore prescribed or who shall wilfully neglect or refuse to discharge the duties which he was appointed to perform, shall, in addition to the other penalties prescribed by law, be liable to a fine of one hundred dollars, to be sued for and recovered by the mayor or board making the appointment, in a court of record, for the use and benefit of the treasury of such city. Any election officer who, being removed for cause, shall fail upon demand to deliver over to his successor the register of the voters, or any tally sheets, book, paper, memorandum or document relating to the registration of voters or the election in his possession, so far as he has made it, shall be liable to a like penalty to be recovered in a like manner for the benefit of such city. Any election officer who is removed for neglect of official duties shall forfeit the compensation earned up to the time of such removal. An election officer who is removed for neglect of official duties shall be ineligible to again serve in such capacity for the term of five years; provided, however, that the board or officer having the power of appointment may rehear the charges against such officer at any time before the expiration of two years, and if it be determined that such removal was without sufficient cause such officer shall be again eligible for appointment if otherwise qualified.

**Derivation:** Election Law, pt. of § 12, as amended by L. 1897, ch. 379, § 5; L. 1898, ch. 675, § 1; L. 1899, ch. 630, § 2; L. 1901, ch. 95, § 6; L. 1904, ch. 70, § 1.

**Amended by** L. 1918, ch. 323, in effect Apr. 24, 1918.

**§ 311. Appointment of inspectors of election in towns.**

Except as provided in section two hundred and ninety-six, inspectors of election in towns shall be appointed by the town board in each year in which a town meeting is held for the election of town officers, and within thirty days thereafter. Such appointments shall be made from lists to be prepared, certified and filed in the manner hereinafter provided, by the two political parties entitled to representation on a board of election officers. The town caucus or primary held by each such political party for the purpose of nominating town officers shall prepare a list containing the names of at least two persons, qualified to serve as inspectors of election, for each election district in said town, which lists shall be certified by the presiding officer and a secretary of said caucus or primary, and filed with the town clerk in the same manner and at the same time as the party certificate of nomination filed by said party. From each of the two lists so filed, the town board shall appoint two persons who possess the qualifications prescribed by law for election officers. If in any town more than one such list be submitted on behalf or in the name of the same political party, only that list can be accepted which is certified by the proper officer or officers of the faction of such party which was recognized as regular by the last preceding state convention of such party; or if no such convention was held during the year, by the proper officer or officers of the faction of such party, which at the time of the filing of such list is recognized as regular by the state committee of such party.

Such appointment shall be made in writing and filed with the town clerk, who shall forthwith notify each person so appointed of his appointment to said office, in the manner in which he is now by law required to give notice to a person of his election to a town office when his name does not appear upon the poll list at the town meeting at which he was elected to said office. From the additional names, if any, contained on the lists so filed, of persons qualified to serve as such, the town board shall appoint inspectors of election in case of the resignation, declination or other incapacity of persons appointed to such office. If such lists contain no additional names of such persons, the town board shall fill vacancies caused by such resignation, declination or other incapacity by appointing persons known, or proved to the satisfaction of a majority of the members of said board to be members of the same political party in which such vacancy occurred. All appointments to fill vacancies shall be made in writing and filed with the town clerk, and notices thereof given by him as hereinbefore provided in the case of an original appointment.

**Derivation:** Election Law, pt. of § 13, as amended by L. 1898, ch. 325, § 3, L. 1901, ch. 538, § 2.

**Consolidators' note.**—Section 296 (old section 8) prescribes that inspectors of election shall be elected in towns, where election districts are changed. This section provides that they shall be appointed by the town board. The last amendment to section 296 having been made in 1906, while the last amendment to this section was made in 1901 the provisions of section 296 would govern in cases of conflict. Accordingly the words "except as provided in section two hundred and ninety-six" have been supplied.

**Cross-References.**—Term of office of inspectors, two years. Town Law, § 82 (part 8, post). Oath of office of person elected or appointed to any town

office, when to be taken and filed. Town Law, § 83 (part 3, post). Power of town board to fill vacancies in any town office. Town Law, § 130 (part 6, post). As to oath of office, see also Election Law, §§ 307, 307, N. Y. Const., art. 13 (part 2, post), and Public Officers Law, § 10 (part 6, post). See also notes to Election Law, §§ 302 and 307.

**Forms.**—Form for bill for compensation of election officers in towns. See Forms, part 12, post.

**Compensation of town election officers.**—"If a different rate is not otherwise established as herein provided, each inspector of election, ballot clerk and poll clerk is entitled to two dollars per day, but the board of supervisors may establish in their county a higher rate, not exceeding six dollars per day." Town Law, § 85.

Although town election officers were employed from five A. M. until nearly midnight at a general election, *Acid*, that they were only entitled to one day's pay under section 178 (now § 85) of the Town Law and that the statute fixing the number of hours which shall constitute a day's work by its terms does not apply to such officers. *People ex rel. Kieel v. Town Bd. West Turin*, (1893) 27 Misc. 470, 59 N. Y. Supp. 234.

**Account of inspectors, etc., in towns, how made out.**—"No account shall be audited by any board of town auditors or supervisors . . . for any services or disbursements unless such account shall be made out in items and accompanied with an affidavit attached thereto, and to be filed with such account, made by the person presenting or claiming the same, that the items of such account are correct and that the disbursements and services charged therein have been in fact made or rendered or are necessary to be made or rendered at that session of the board, and stating that no part thereof has been paid or satisfied, and the chairman of the board . . . may administer any oath required under this section." Extract from Town Law, § 175.

## § 312. Appointment of clerks in towns.

At the first meeting in each year of the board of inspectors in every district in a town, one general clerk shall be appointed by the two inspectors of election representing one of the political parties entitled to representation on such board, and one such clerk shall be appointed by the two inspectors representing the other political party. Such appointments shall be in writing, signed by the inspectors making the appointments respectively, and shall be filed by them with the town clerk of the town in which such election district is situated, and a copy thereof with the post-office address of each person so appointed shall be mailed to the clerk of the county.

The general clerks so appointed shall hold their office during the term of office of the inspectors appointing them, except as hereinafter provided. The persons so appointed as general clerks shall be voters in the district in which they are appointed to serve, and shall possess the qualifications required of such officers by section three hundred and two of this article.

If at the time of any election at which general clerks are required to be present at the polling place in any election district, the office of any such clerk of such district shall be vacant; or

such a clerk shall be absent, the inspectors of election in such district shall forthwith appoint a person to fill such vacancy. Such person so appointed shall, before he acts as poll clerk or ballot clerk, as the case may be, take the constitutional and statutory oaths of office.

**Derivation:** Election Law, pt. of § 13, as amended by L. 1892, ch. 335, § 2; L. 1901, ch. 536, § 2.

**Amended by** L. 1919, ch. 504, in effect May 9, 1919.

**Cross-references.**— See note to preceding section.

**Form.**— As to form of appointment of poll clerks, ballot clerks and general clerks in towns, see Forms (part 12, post).

### § 313. Supplying vacancies and absences.

If at the time of any meeting of the inspectors there shall be a vacancy or if any inspectors shall be absent from such meeting, the inspector present who shall be a member of the same political party as the absent inspector shall appoint a qualified voter of the district, who shall also be a member of the same political party as the absent inspector, to act in the place of such absent inspector for the whole of that day. And the person so appointed shall be paid the amount which the absent inspector, if he had been present, would have been entitled to be paid for his services upon that day, and the absent inspector shall not be paid for any services for that day.

If two inspectors, who are members of the same political party, shall be absent from any such meeting, on election day, the poll clerk, if he be present, and if he be absent then the ballot clerk, or the general clerk, who is a member of the same political party as the absent inspectors, shall appoint two qualified voters of the district, who shall be members of the same political party as the absent inspectors, to act in the place of such absent inspectors for the whole of that day; and the persons so appointed shall be paid the amounts which the absent inspectors, if they had been present, would have been entitled to be paid for their services upon that day, and the absent inspectors shall not be paid for any services for that day.

If two inspectors, who are members of the same political party, shall be absent on any of the days of registration, the inspector or inspectors present shall appoint qualified voters of the district, who shall be members of the same political party as the absent inspectors, to act until such absent inspectors, or their successors

duly appointed as hereinbefore provided, shall appear and such persons, so serving temporarily, shall serve without pay.

If, at any such time, the offices of all inspectors are vacant, or no inspector shall appear within one hour after the time fixed by law for the opening of such meeting, the qualified voters of the district present, not less than ten, may designate four qualified voters of the district belonging to the political parties as specified in section three hundred and two, to fill such vacancies, or to act in the place of such inspectors respectively, until the absent inspectors respectively appear.

If at any time there shall be a vacancy in the office of any poll clerk, ballot clerk or general clerk, or if any such clerk shall be absent from a meeting which he is required to attend, the inspector or inspectors present, who shall be a member or members of the same political party as the absent clerk, shall appoint a qualified elector of the district, who shall also be a member of the same political party as the absent clerk to fill such vacancy.

Every person so appointed or designated to act as an inspector or clerk shall take the constitutional and statutory oath as prescribed by this chapter.

**Derivation:** Election Law, pt. of § 14, as amended by L. 1904, ch. 487, § 1. Amended by L. 1919, ch. 504, in effect May 9, 1919.

**Cross-references.** - Similar provisions as to supplying vacancies in office of poll or ballot clerks in towns. See preceding section. Civil service rules and regulations do not apply to election officers. Civil Service Law, § 9.

**Forma.** - Forms for appointment to fill vacancies and absences at meetings of inspectors. See Forms (part 12, post).

If no clerks can be procured election is not to fail, but inspectors must perform the clerks' duties. *People v. Cook* (1853), 8 N. Y. 88.

### § 313-a. Filling vacancies in board of canvassing inspectors in cities of over one million inhabitants.

In a city of over one million inhabitants, the provisions of section three hundred and thirteen shall apply to the vacancies existing or occurring in the board of inspectors appointed to serve during the canvass and return of the votes; and any power or duty with respect to filling such vacancy devolved by such section upon one or more inspectors or other election officers shall be exercised by an inspector or inspectors of such board who may be present, in the same manner as such power or duties are exercised by an election officer serving before the close of the polls, regard being



had to the party affiliation of the officer exercising such power as provided in section three hundred and thirteen.

Added by L. 1918, ch. 323, in effect Apr. 24, 1918.

### § 314. Organization of boards of inspectors.

1. Before otherwise entering upon their duties the inspectors of each district shall then immediately appoint one of their number chairman; or, if a majority shall not agree upon such appointment, they shall draw lots for that position.

2. In any election district outside of a city of over one million inhabitants, the chairman of the board of inspectors shall designate two inspectors, of opposite political faith, to act as poll clerks, and they shall have all the powers and duties of poll clerks under this chapter during the taking of the vote and until the completion of the duties of poll clerks, in preparation of the canvass, prescribed by sections three hundred and sixty-six and three hundred and sixty-seven of such chapter, after which time the general clerks, appointed as such under the foregoing provisions of this article, shall have the powers and duties of, and be known as, poll clerks for the purpose of the canvass of the votes and return thereof. Such general clerks shall be known as, and have the powers and duties of ballot clerks under the provisions of this chapter during the taking of the vote, and thereafter until they have completed the duties of ballot clerks prescribed by section three hundred and sixty-six.

3. In a city of over one million inhabitants, the four additional inspectors, to serve after the closing of the polls, shall appoint one of their number chairman in like manner, or, if a majority shall not agree upon such appointment, they shall draw lots for that position. At each election, the chairman of such board of additional inspectors shall designate two inspectors, of opposite political faith, to act as poll clerks, and they shall have all the powers and duties of poll clerks during the canvass of the votes, in addition to their powers and duties of inspectors.

4. In all proceedings of the inspectors acting as registrars, inspectors or canvassers, they shall act as a board, and, in a case of a question arising as to matters which may call for a determination by them, a majority of such board shall decide.



**Derivation:** Election Law, pt. of § 14, as amended by L. 1904, ch. 487, § 1, and pt. of § 193, subd. 1.

**Amended by** L. 1918, ch. 322; L. 1919, ch. 504, in effect May 9, 1919.

### § 315. Preservation of order by inspectors.

All meetings of the board of inspectors shall be public. Such board and each individual member thereof shall have full authority to preserve peace and good order at such meetings, and around the polls of elections, and to keep the access thereto unobstructed, and to enforce obedience to their lawful commands. The said board may appoint one or more voters to communicate their orders and directions, and to assist in the performance of their duties in this section enjoined. If any person shall refuse to obey the lawful commands of the inspectors, or by disorderly conduct in their presence or hearing shall interrupt or disturb their proceedings, they shall make an order directing the sheriff or any constable of the county, or any peace or police officer to take the person so offending into custody and retain him until the registration of voters or the canvass of the votes shall be completed, but such order shall not prohibit the person taken into custody from voting. Such order shall be executed by any sheriff, constable, peace or police officer, to whom the same shall be delivered, but if none shall be present, then by any other person deputed by such board in writing. The said board or any member thereof may order the arrest of any person other than the election officer violating or attempting to violate any of the provisions of this chapter.

**Derivation:** Election Law, § 15.

**Cross-references** — Disobedience of orders of inspectors. Penal Law, § 764 (part 5, post). Arrest without a warrant may be made by either a peace officer or by a private citizen when a crime is committed in his presence. Code of Criminal Procedure, §§ 177, 183.

**Forms.** Forms of precepts in case of refusal to obey the lawful commands of inspectors or disorderly conduct in presence or hearing of inspectors. See Forms (part 12, post).

**Power of inspectors.** — Inspectors have a right to keep order during a canvass, but under pretense of same they have no right to turn out a peaceful and quiet citizen whose presence does not interfere with the discharge of their duties. *Horton v. Whistler* (1886), 4 N. Y. St. Rep. 810.

### § 316. Ballot boxes.

Separate ballot boxes appropriately and conspicuously marked must be provided as occasion shall require, to receive

1. Ballots for presidential electors.

2. Ballots for general officers.
3. Ballots upon constitutional amendments and questions submitted.
4. Ballots upon town propositions and upon town appropriations.
5. Ballots defective in printing or spoiled and mutilated.
6. Stubs detached from ballots.

Each box shall be supplied with a sufficient lock and key and with an opening in the top large enough to allow a single folded ballot to be easily passed through the opening, but no larger. It shall be large enough to receive all the ballots which may be lawfully deposited therein at any election, and it shall be well and strongly made and be free from checks and blemishes.

Each and every inspector of elections shall be personally responsible for the custody of each box and its contents from the time the election begins until the box is delivered, according to law, to the person entitled to receive it. Upon making any such delivery each inspector of elections shall be entitled to a receipt for each box delivered.

*Derivation:* Election Law, § 16, as amended by L. 1900, ch. 381, § 1; L. 1902, ch. 405, § 1; L. 1904, ch. 733, § 1.

*Amended by* L. 1911, ch. 649; L. 1913, ch. 821; L. 1917, ch. 703, in effect June 1, 1917.

A separate ballot for candidates for town officers need not be furnished at a general election in an odd numbered year. *People ex rel Shea v. Gilbert* (1917), 189 App. Div. 122, 178 N. Y. Supp. 327.

### § 317. Voting booths and guard-rails.

There shall be in each polling place during each election a sufficient number of voting booths, not less than one for every seventy-five registered voters in the district. Each such booth shall be at least three feet square, shall have four sides inclosed, each at least six feet high, and the one in front shall open and shut as a door swinging outward, and shall extend within two feet of the floor. Each such booth shall contain a shelf, which if made of wood shall have a smooth, plane surface and if made of any other material shall have a smooth surface and which shall be at least one foot wide, extending across one side of the booth at a convenient height for writing, and shall be furnished with such supplies and conveniences including pencils having black lead only, as will enable the voters to conveniently prepare their ballots for voting. Each booth shall be kept clearly lighted while the polls are open, by artificial lights if necessary.

A guard-rail shall be placed at each polling place at least six feet from the ballot boxes and the booths, and no ballot box or booth shall be placed within six feet of such rail. Each guard-rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths can only be reached by passing within the guard-rail, and that the booths, ballot boxes, election officers and every part of the polling place except the inside of the booths shall be in plain view of the election officers and the persons just outside the guard-rail. Such booths shall be so arranged that there shall be no access to intending voters or to the booths through any door, window or opening, except by the door in front of said booth.

**Derivation:** Election Law, § 17.

**Amended by L. 1918, ch. 323, in effect Apr. 24, 1918.**

**Cross-references**—Supplies for voting booths, how furnished. See Election Law, § 341. Removal, mutilation or destruction of election booths, supplies, etc. Penal Law, § 758 (part 5, post).

### § 318. Apportionment of election expenses.

The expense of providing polling places, voting booths, supplies therefor, guard-rails and other furniture of the polling place, and distance markers, and the compensation of the election officers in each election district, shall be a charge upon the town or city in which such election district is situated, except that such expenses incurred for the purpose of conducting a village election not held at the same time as a general election shall be a charge upon the village.

The expense of printing and delivering the official ballots, sample ballots, affidavits for proof of citizenship by marriage and cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers to be used at a town meeting or city or village election not held at the same time as a general election, and of printing the lists of nominations therefor shall be a charge upon the town, city or village in which the meeting or election is held. The expense of printing and delivering the official ballots, sample ballots, affidavits for proof of citizenship by marriage, and cards of instruction, poll books if any separate from the register, tally sheets, return sheets for inspectors and ballot clerks, and distance markers to be used in any county, except such counties or portions thereof as are included within

the city of New York, at any other election, if no town meeting or city or village election be held at the same time therewith, and of printing the lists of nominations therefor, shall be a charge upon such county. The expense of printing and delivering the official ballots, sample ballots, affidavits for proof of citizenship by marriage, and cards of instruction, poll books if any separate from the register, tally sheets, return sheets for inspectors and ballot clerks, and distance markers, to be used in any such county at any other election, and of printing the lists of nominations therefor, if the town meeting or city or village election be held in such county at the same time therewith, shall be apportioned by the county clerk between such town, city or village and such county, in the proportion of the number of candidates for town, city or village officers on such ballots, respectively, to the whole number of candidates thereon, and the amount of such expense so apportioned to each such municipality shall be a charge thereon.

Whenever voting machines are used in an election by any city, town or village, only such expenses as are caused by the use of such machines, and such as are necessary for the proper conduct of the elections as required by this chapter shall be charged to such city, town or village.

All expenses relating to or connected with elections lawfully incurred by the board of elections of the city of New York shall be a charge on such city, and after being audited by the proper officer, shall be paid by the comptroller of said city upon the certificate of such board.

*Derivation:* Election Law, pt. of § 18, as amended by L. 1897, ch. 379, § 6; L. 1899, ch. 467, § 1, and ch. 630, § 3; L. 1900, ch. 381, § 2, and ch. 711, § 1; L. 1901, ch. 95, § 7.

*Amended by* L. 1918, ch. 323; L. 1919, ch. 504, in effect May 9, 1919.

*Publication in New York city of list of registration and polling places.* See *Morning Telegraph Co. v. City of New York* (1909), 132 App. Div. 634, 117 N. Y. Supp. 496, affg 61 Misc. 511, 115 N. Y. Supp. 549.

### § 319. Fees of election officers and others.

1. The county clerk of each county, not salaried, shall be paid by such county a reasonable compensation for his services, if any, in carrying out the provisions of this chapter, to be fixed by the board of supervisors of the county, or the board acting as such board of supervisors. The town clerk of each town shall be paid

by such town a reasonable compensation for his services in carrying out the provisions of this chapter, to be fixed by the other members of the town board of the town. General clerks shall receive, for all services as ballot clerks and poll clerks in connection with an election, the same compensation as inspectors of election for the election and be paid in like manner. Inspectors designated and acting as poll clerks during the taking of the vote and preparation for canvass shall receive only the compensation prescribed by law for inspectors. An inspector of election, however, lawfully required to file papers in the county clerk's office, or office of the board or commissioner of elections, shall, unless he resides in the county if within the city of New York, or in any other city or town in which such office is situated, be entitled to receive as compensation therefor five dollars, and also four cents a mile for every mile actually and necessarily traveled between his residence and such county clerk's office in going to and returning from such office.

2. In cities of the first class having a population of two million or more inhabitants the persons appointed and serving as inspectors of election shall receive four dollars for the hours fixed by law for each day of registration from Monday to Friday inclusive, and ten dollars for such hours on the last day of registration and on the day of revision of registration for a special election, and eight dollars for the hours fixed by law for the election, and six dollars for the count and return of the votes. The poll clerks in such city, other than canvassing inspectors acting as poll clerks, shall each receive for their services ten dollars, and the ballot clerks shall receive six dollars each. Inspectors acting as poll clerks during the count and return of the votes shall receive only the compensation above provided for such services as inspectors. Such officers shall be paid by the comptrollers of the respective cities upon the certificate of the board or officer appointing them.

3. Election officers required to meet at a different time from the regular count of the votes cast at a general election for the purpose of counting and returning the votes of electors absent from their election districts in time of war in the actual military or naval service of this state or of the United States shall be paid five dollars each.

**Derivation:** Election Law, pt. of § 15, as amended by L. 1837, ch. 379, § 4; L. 1849, ch. 467, § 1, and ch. 630, § 3. L. 1900, ch. 381, § 2, and ch. 711, § 1; L. 1901, ch. 95, § 7.

**Amended by** L. 1915, ch. 678, in effect May 22, 1915; L. 1918, ch. 323; L. 1919, ch. 504, in effect May 9, 1919.

**Cross-reference** As to compensation of election officers in towns, see note to Election Law, § 311.

**Compensation of town clerk.**—Under this section the town board has the right to fix a reasonable compensation for services of the town clerk in carrying out the provisions of this act. When they have determined the amount of such compensation, the town board of audit must audit the claim and cannot refuse on the ground that the allowance was unreasonable. *People ex rel. Godney v. Nippell* (1907), 116 App. Div. 753, 102 N. Y. Supp. 69.

### § 320. Delivery of election laws to clerks, boards and election officers.

The secretary of state shall at least sixty days before each general election cause to be prepared a compilation of the election law with explanatory notes and instructions, properly indexed, and procure the same to be printed by the legislative printer, and transmit to the board of elections of each county, and to the board of elections of the city of New York, located in the borough of Manhattan, and to the branch office of the board of elections in each of the other boroughs of the city of New York, a sufficient number of copies thereof to furnish one such copy to each member of each such board and to each of said branch offices of the board of elections of the city of New York and one to each county, town, village and city clerk and to each election officer in any such county and said boroughs, together with such number of extra copies as may in his judgment be necessary to replace copies lost or mutilated before delivery thereof to election officers.

The board of elections of each county, except those counties the whole of which is included within the city of New York, shall forthwith transmit one of such copies to each of such officers in such county, and the board of elections of the city of New York shall cause to be delivered one of such copies to each of such officers in the city of New York. Each copy so received by each such officer shall belong to the office of the person receiving it. Every incumbent of the office shall preserve such copy during his term of office and upon the expiration of his term or removal from office deliver it to his successor. The secretary of state shall also transmit to the state superintendent of elections a sufficient number of



such copies to furnish fifty copies to the superintendent and two copies to each deputy.

**Derivation:** Election Law, § 19, as amended by L. 1897, ch. 379, § 7; L. 1899, ch. 650, § 4; L. 1901, ch. 95, § 3; L. 1905, ch. 643, § 6.

**Amended by** L. 1916, ch. 537; L. 1918, ch. 323, in effect Apr. 24, 1918.

**Constitutional.**—The provision of this section authorizing the secretary of state to print a compilation of the Election Laws does not violate the provision of the United States Constitution prohibiting the passage of laws impairing the obligation of contracts: *People ex rel. Weed Parsons Printing Company v. Palmer* (1896), 18 Misc. 103, 41 N. Y. Supp. 573.

## ARTICLE 9.

## BALLOTS AND STATIONERY.

## Section 330. Official ballots for elections.

- 331. Classification of ballots, form of ballots for candidates.
- 332. Form of ballot for questions submitted.
- 333. Sample ballots, instruction cards and stationery.
- 333a. Additional sample ballots in the year nineteen hundred and fourteen; distribution of such ballots.
- 334. Blank forms for election officers.
- 335. Form of ballot clerk's return.
- 336. Description of tally sheets.
- 337. Forms of return and tally of votes cast for presidential electors.
- 338. Forms of return and tally of votes for officers other than presidential electors.
- 339. Forms of return and tally of votes upon questions submitted.
- 340. Number of official ballots.
- 341. Officers providing ballots and stationery.
- 342. Public inspection of ballots.
- 343. Distribution of ballots and stationery.
- 344. Errors and omissions in ballots.
- 345. Unofficial ballots.

## § 330. Official ballots for elections.

Official ballots shall be provided at public expense at each polling place for every election at which public officers are to be elected directly by the people, except an election of school district officers or school officers of a city or village at which no other public officer is to be elected, and except an election of officers of a fire district outside of cities and incorporated villages, at which excepted elections any form of ballot which may be adopted and used by the meeting at which such election shall be had shall be legal.

Derivation: Election Law, § 80, as amended by L. 1897, ch. 602, § 1.

Cross-References. - Expense of ballots: Election Law, § 318. Officers providing ballots: Election Law, § 341. Misconduct in relation to official ballots: Penal Law, § 760 (part 5, post).

## § 331. Classification of ballots; form of ballots for candidates.

1. *General provisions.* There shall be five kinds of ballots, called respectively ballots for presidential electors, ballots for general officers, ballots upon constitutional amendments and questions submitted, ballots upon town propositions, and ballots upon town appropriations, which shall be used for the purposes which their names severally indicate and not otherwise. Ballots for general officers shall contain the names of all candidates except presidential electors. All ballots shall be printed in black ink, on book paper of good quality free from ground wood, five hun-

dred sheets of which twenty-five by thirty-eight inches in size shall weigh sixty pounds and shall test for that size and weight at least twenty points on a Morrison tester. They shall be rectangular in shape, not less than eight inches in width and twelve inches in length, and shall have a margin extending beyond any printing thereon.

All ballots of the same kind for the same polling place shall be of precisely the same size, quality and shade of paper, and of precisely the same kind and arrangement of type and tint of ink. A different, but in each case uniform, kind of type shall be used for printing the names of candidates, the titles of offices, political designations, and the reading form of constitutional amendments and other questions and propositions submitted. The names of candidates shall be printed in capital letters in black-faced type not less than one-eighth nor more than three-sixteenths of an inch in height.

Each ballot shall be printed on the same sheet with a stub and shall be separated therefrom by a horizontal line of perforations extending across the entire width of the ballot. On the face of the stub shall be printed the instructions to voters hereinafter provided. On the back of the stub, immediately above the center of the indorsement on the back of the ballot hereinafter referred to, shall be printed "No. . . .," the blank to be filled with the consecutive number of the ballot, beginning with "No. 1," and increasing in regular numerical order.

On the back of the ballot, below the line of perforations, just to the right of the center, and outside when the ballot is folded, shall be printed the following indorsement, the blanks being properly filled and the numbers running from one upward, consecutively:

Official ballot (for Presidential Electors).

County of . . . . .

. . . . . Assembly District (ward or town).

. . . . . Election District.

(Date of Election.)

(Facsimile of the signature of officer causing the ballot to be printed.)

Each ballot shall be printed in sections, on which the candidates' names, emblems and political designations, or the constitutional amendment, or other question submitted, with the voting squares, and other requisite matter shall be boxed in by heavy black lines in the manner indicated in the illustration of the ballot hereinafter provided. The voting squares and the spaces occupied by emblems shall have a depth and width of five-sixteenths of an inch.

In case the sections shall be so numerous as to make the ballot unwieldy if they are printed in one column, they may be printed in as many columns as shall be necessary, and in that case, in order to produce an exactly rectangular ballot, blank sections may be used.

On each ballot shall be voting squares in which voters may make their voting marks. All voting squares shall be bounded by heavy black lines, the perpendicular lines to be not less than one-sixteenth of an inch wide. In all ballots there shall be a perpendicular column of these squares, and in the ballot for general officers, in the case of a candidate for governor or member of assembly nominated by two or more political organizations, the additional squares arranged horizontally as provided in subdivision three of this section. No voting squares shall be provided in the blank spaces for written names.

The ballots bearing the same number at the same election shall constitute a set of ballots.

Each political organization whose party name contains more than eleven letters shall select an abbreviated form thereof containing not more than eleven letters which shall be used upon the ballot whenever the necessities of space shall so require. The abbreviated form shall be certified at the same time and in the same manner as party names are required to be certified. In printing the names of candidates whose full names contain sixteen letters or more not more than one name other than the surname shall be printed in full, and each candidate may indicate in writing to the officer or officers charged with the duty of preparing the ballots the form in which, subject to this restriction, his name shall be printed. No emblem shall occupy a space longer in any direction than the voting square to which it relates.

In conformity with the foregoing provisions and with the provisions of subdivision three of this section the face of the ballot for general officers shall be substantially in the following form: (Form omitted.)

2. *Ballots for presidential electors.* The names of the presidential electors of each party shall be printed in one column indicating:

First. The electors at large, whose names shall be arranged in the alphabetical order of the surnames; and

Second. The electors of each district, whose names shall be arranged in the numerical order of their district.

The columns shall be parallel to each other and shall be separated by heavy black lines. In addition to the party columns a blank column with lines for writing shall also be provided in

which voters may write the names of candidates for presidential electors not on the ballot and which shall be sufficient to contain as many names as there are electors to be chosen. It shall be designated as the blank column and shall contain no voting spaces. At the head of each party column shall be printed the party emblem; below this a blank circle three-quarters of an inch in diameter; below this the party name in large type; below this the names of the candidates for president and vice-president; and below this a heavy line dividing the heading from the names of the presidential electors. Above the name of the first elector shall be printed the words "presidential electors." The names of the presidential electors shall be printed in spaces one-quarter of an inch in depth, except that the first space containing also the words "presidential electors" shall be half an inch in depth. The spaces shall be divided from each other by light horizontal lines. At the left of the name of each elector shall be printed a voting space one-quarter of an inch square, except the space opposite the first name, which shall be half an inch in depth.

Each party circle shall be surrounded by the following instructions, plainly printed: "For a straight ticket, mark within this circle."

The columns for the presidential electors of independent bodies shall be similar to the party columns except that above the emblem in each column shall be printed the words "independent nominations" in large type like that used for the party names.

In the blank column the space occupied by the emblem and voting circle in the party column shall be occupied by the following instructions, plainly printed: "In the column below, the voter may write the name of any person for whom he desires to vote whose name is not printed on the ballot." Below the line dividing the heading from the blank spaces shall be printed, as in the other columns, the words "presidential electors."

The columns shall be arranged upon the ballot as directed by the secretary of state, precedence, however, being given to the several parties according to the number of votes for governor polled at the last preceding gubernatorial election.

On the stub at the top of the ballot shall be printed in heavy black type the following instructions:

"1. To vote for all the electors of one party make a cross X mark within the circle above the party column.

2. To vote for some, but not all, of the electors of one party make a cross X mark in the square at the left of the name of every candidate printed on the ballot for whom you desire to vote.

3. To vote for any candidate not on the ballot write his name in the blank space provided therefor.

4. Mark only with a pencil having black lead.

5. Any other mark or any erasure or tear on the ballot renders it void.

6. If you tear, or deface, or wrongly mark this ballot, return it and obtain another.

3. *Ballots for general officers.* The names of all candidates for any one office shall be printed in a separate section, and the sections shall be in the customary order of the offices and shall be numbered from one upward by a numeral printed in the upper right hand corner of the section. The names of candidates shall be printed in their appropriate section in such order as the board of elections may direct, precedence, however, being given, except as herein otherwise provided, to the candidate of the party which polled the highest number of votes for governor at the last preceding election for such office, and so on. At the top of each section in the center shall be printed on one line the title of the office. On the same line, to the left of such title and immediately above the emblems and voting squares, there shall be printed a direction as to the number of candidates for whom a vote may be cast, which direction shall be punctuated by an exclamation point. If two or more candidates are nominated for the same office for different terms, the term for which each is nominated shall be printed as a part of the title of the office. At the bottom of each section as many separate spaces as there are candidates to be elected shall be left blank in which the voter may write the names of any candidates not on the ballot. Except as herein otherwise provided with respect to a candidate for the office of governor or of member of assembly who is nominated by more than one political organization, there shall be printed on each line below the top, in the following order, from left to right, the party emblem, the voting square, the candidate's name and the name of the party by which he is nominated. The width of the enclosure containing the name of the candidate and of such party shall not exceed three and one-half inches. In any case where a candidate for public office is nominated by more than one political organization, the party names and emblems shall appear in the order of priority based on the relative number of votes cast for governor by each organization at the preceding election of a governor. In any such case, the emblems shall be arranged horizontally before the voting square, beginning next to the square immediately preceding the name of the candidate with the emblem of the party casting the highest number of such votes. When any candidate for the office of governor or



number of assembly is nominated by more than one political organization, there shall be one voting square in the same horizontal row as the emblem, to the right of each emblem before the name of a candidate so nominated for such office. The final letter of the party name or names shall be close to the right hand perpendicular line of the box, and any space between the candidate's name and his party name or names shall be filled with dotted or waved lines.

On the stub at the top of the ballot shall be printed the following directions to the voter:

1. To vote for a candidate on this ballot make a single cross X mark in one of the squares to the right of an emblem opposite his name.

2. To vote for a candidate not on this ballot write his name on a blank line under the candidates for that office.

3. Mark only with a pencil having black lead.

4. Any other mark or erasure on this ballot is unlawful.

5. If you tear, or deface, or wrongly mark this ballot, return it and obtain another.

In direction number one the words "right" and "emblem" shall be underlined.

Derivation: Election Law, § 81.

Amended by L. 1911, ch. 649 and 672, in effect Oct. 4, 1911. Repealed and new section inserted by L. 1913, ch. 821, in effect Dec. 17, 1913. Amended by L. 1914, ch. 87 and 211, L. 1916, ch. 537, L. 1918, ch. 323, in effect Apr. 21, 1918.

Cross-references.—As to errors and omissions in ballots, see Election Law, § 331 and note. Form where voting must be in code. See Election Law, § 297.

It is the intention of the Ballot Law (ch. 810 of 1895) to spread before the voter the names of the various persons for whom he is called upon to vote, and he is allowed to vote a straight party ticket or a straight independent ticket or an eclectic ticket, as he sees fit. Devices or emblems were resorted to in order to enable an illiterate voter to attain these ends. *Fernbacher v. Roosevelt* (1895), 90 Hun 441, 35 N. Y. Supp. 898.

It is the intention of the statute that there shall be a single column for a single party and a single device at the head of that column so that the voter who desires to vote a straight ticket may vote the ticket under that column. *Fernbacher v. Roosevelt* (1895), 90 Hun 441, 35 N. Y. Supp. 898.

An independent party may nominate the same individuals as are nominated by an existing political party, but they must nominate them as an independent party, place under their device and list them under their ticket. *Fernbacher v. Roosevelt* (1895), 90 Hun 441, 35 N. Y. Supp. 898.

Constitutionality.—The giving of such priority to the candidates of the party successful at the last election is not in violation of section 1 of article 1 of the State Constitution which provides that "No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers." The legislature has power to fix the form of ballot. *Matter of Walsh v. P. Cle* (1917), 179 App. Div. 582, 166 N. Y. Supp. 881.

Constitutionality of amendment of 1911.—Chapter 646 of the Laws of 1911, amending this section so that although a person shall have been nominated by more than one political party for the same office his name shall be printed but once upon the ballot and in the column of the party nominating him which first appears upon the ballot, unless the candidate requires it to be printed in the column of some other party which nominated him, is unconstitutional. *Hypper v. Britt* (1911), 203 N. Y. 144, rev'g 146 App. Div. 363, rev'g 73 Misc. 360.

**In making up the various official ballots, the county clerk takes into consideration the nominations for State and district offices which have been certified to the secretary of state and the nominations for local offices which appear upon certificates filed in his own office.** In combining the names to go upon a particular official ballot he is to select, so far as party nominations are concerned, the candidates nominated by one and the same party, and when there are two sets of nominations from the same party he cannot refuse to place one of these sets on a ballot with the State nominees simply because the faction which made the local nominations was not recognized by the last State convention. His duty is to inquire and determine as a matter of fact whether that faction is really a part of such party or not. If it is, its local candidates should be named on a ballot with the State ticket. If it is not, they should have a ballot by themselves, with blanks so far as relates to State offices. *Matter of Mitchell*, (1894) 81 Hun 401, 30 N. Y. Supp. 962, *Matter of Wheeler*, (1895) 10 Misc. Rep. 55, 30 N. Y. Supp. 854.

Any local party, whether regular or not, may have the State nominees of the said party to which it adheres and also all kindred local nominees printed on its ballot. *Matter of Wheeler*, (1895) 10 Misc. 55, 30 N. Y. Supp. 854.

The names of all candidates to be voted for at a general election, including village police commissioners, shall be placed on the official ballot prepared by the county clerk. *In re McLaren*, (1890) 34 N. Y. St. Rep. 634, 13 N. Y. Supp. 420.

**The only guide for the county clerk in making up the official ballots consists of the certificates of nomination filed with him.** He cannot go behind or beyond these and place under the head or emblem of a particular party the names of candidates not nominated by that party, although he may know that each party intends to support such candidates. *Matter of Madden*, (1895) 148 N. Y. 136.

The law casts upon the county clerk the duty of combining allied nominations and thereby making up the official tickets and ballots from the certificates of nomination. *Matter of Hirsh*, (1895) 14 Misc. 377, 71 N. Y. St. Rep. 36, 36 N. Y. Supp. 10.

**Construction of contract with county clerk for printing ballots.** See *People ex rel. Newburgh News Pr. & Pub. Co. v. Supervisors of Orange Co.* (1910) 140 App. Div. 227, 125 N. Y. Supp. 103.

**Order of precedence upon ballot.**—The form of the ballot is to be designated by the Secretary of State, and, as he is to certify the nominations in the order in which he has received them, police commissioners cannot ignore his certificate as to precedence and adopt an order of their own. *Fernbacher v. Roosevelt* (1895), 90 Hun 441, 35 N. Y. Supp. 808.

**Order of names upon certificates of nomination of justices of the Supreme Court.** Report of Atty.-Gen. (1906), 280.

The word "town" cannot be placed upon the ballot immediately preceding the list of town nominations. Report of Atty. Gen. (1902), 321.

One claiming a regular nomination at the hands of a convention which has been declared to be irregular by the supreme authority within the party in the state cannot be regarded as a regular nominee of his party and is consequently not entitled to have his name printed upon the official ballot. *Matter of Redmond* (1893) 5 Misc. 369, 25 N. Y. Supp. 391.

No matter what a body of voters may have called themselves, if a ticket is nominated and filed according to law the clerk should print the ticket for the popular vote, and a mandamus will be compelling him so to do in case of either his neglect or his refusal to act. *People ex rel. Wallace v. Ryan* (1901), 60 Hun 38, 15 N. Y. Supp. 627.

**Failure to make nominations precludes political party from retaining column on ballot.** *Matter of Myers* (1909), 110 App. Div. 22, 121 N. Y. Supp. 43.

The court may not by mandamus attempt to direct the board of elections in the exercise of discretion vested in it by the legislature in arranging the order of the names of candidates upon the ballot, unless the action of the

board is so unjust, arbitrary and discriminatory as to shock the conscience as violative of all right, decency and fair play. *Matter of Walsh v. Boyle* (1917), 179 App. Div. 582, 166 N. Y. Supp. 681.

In printing on ballots the names of candidates for election to the five positions of justice of the City Court of the City of New York under the present statute, which abolishes party columns and provides for a group system for each office, it is proper for the board of elections to place at the head of the list the names of the candidates of the prevailing party at the last previous election, and it would be improper to print the names of candidates in rotation in different election districts as it would produce great acrimonious trouble and confusion in the printing and distribution and counting of ballots. Although five persons are to be elected as justices of the City Court, the names of all candidates should be placed in one section with a direction to vote for five only; the name of each justice should not be placed in a separate section. *Matter of Walsh v. Boyle* (1917), 179 App. Div. 582, 166 N. Y. Supp. 681.

Commissioners or boards of election act in a ministerial capacity only, in preparing ballots for election, and have no discretion as to the form of the ballot or designation of the officers, and hence a candidate for justice of the supreme court cannot compel said commissioners to provide ballots in which each candidate is in a section or class by himself. *Matter of Burr v. Voorhis* (1920), 229 N. Y. 392.

Marking of ballots.—See cases cited under § 358, post.

A separate ballot for candidates for town offices need not be furnished at a general election in an odd numbered year. *People ex rel. Shea v. Gilbert* (1919), 189 App. Div. 122, 178 N. Y. Supp. 327.

## § 332. Form of ballot for questions submitted.

The reading form of each proposed constitutional amendment or other question submitted as provided in section two hundred and ninety-five of this chapter shall be printed in a separate section. At the left of each question shall appear two voting squares, one above the other, each at least one-half inch square. At the left of the upper square shall be printed the word "Yes," and at the left of the lower square shall be printed the word "No." On the stub at the top of the ballot shall be printed the following directions to the voter:

- 1 To vote "Yes" on any question make a cross X mark in the square opposite the word "Yes."
- 2 To vote "No," make a cross X mark in the square opposite the word "No."
- 3 Mark only with a pencil having black lead.
- 4 Any other mark, erasure or tear on the ballot renders it void.
- 5 If you tear, or deface, or wrongly mark this ballot, return it and obtain another.

The questions shall be numbered consecutively on the face of the ballot, and on the back of each voting section shall be printed the number of the question which it contains.

So far as possible the ballots upon town propositions shall conform to the directions herein contained respecting the ballot on constitutional amendments and questions submitted.

All ballots for the submission of town propositions for raising or appropriating money for town purposes, or for incurring a town liability, to be voted at any town meeting in any town, shall be separate from all other ballots for the submission of other propositions or questions to the electors of such town to be voted at the same town meeting or election. Such ballots shall be indorsed "ballot upon town appropriations."

Derivation: Election Law, § 82, as amended by L. 1900, ch. 381, § 4.  
L. 1900, ch. 598, § 3.

Amended by L. 1913, ch. 831, in effect Dec. 17, 1913.

This section does not apply to an election held to determine the question of the incorporation of a proposed village. The general act for the incorporation of villages (ch. 291 of 1870) is not repeated directly or by implication by the Election Law. Official ballots need not be used in such an election. *Matter of Taylor* (1896), 3 App. Div. 241, 38 N. Y. Supp. 348, aff'd 150 N. Y. 232.

**Form of ballot.**—What addition to the ballot does not render it void. *People ex rel. Williams v. Bd. of Canvassers* (1905), 105 App. Div. 197, 94 N. Y. Supp. 996, aff'd 183 N. Y. 538.

A question as to whether a village shall establish a lighting plant, submitted to the electors under section 211 of the Village Law, does not violate section 82 (now section 332) of the Election Law in stating more than one question because the ballots as printed authorized lighting by water power, steam power or purchased electric current, or any approved combination of those methods, but merely gives the village officers discretion in choosing the method to be used. *Harrett v. Village of Potomac* (1906), 112 App. Div. 727, 98 N. Y. Supp. 963.

Ballots for raising money must be separate. *Report of Atty.-Gen.* (1903), 271.

**Local option propositions.**—It is not a valid objection to the legality of the submission of a local option proposition when clearly distinguished upon a ballot, that the ballot contains constitutional amendments submitted to the people. *Matter of Arnold* (1900), 32 Misc. 439, 66 N. Y. Supp. 567.

The provision of section 8 (now § 294) of the Election Law that amendments, propositions or questions shall be separately and consecutively numbered does not apply to questions relating to the sale of liquor or to local option, but the provisions of section 82 (now § 332) of the Election Law, requiring a separate ballot where an amendment, proposition or question is to be submitted to vote and, where two or more are to be submitted, that they shall be separately numbered and printed do apply to such questions. *Matter of Webster* (1906), 60 Misc. 253, 100 N. Y. Supp. 298, aff'd, 113 App. Div. 808, 98 N. Y. Supp. 1118. See also opinion of Atty.-Gen. in report of 1903, p. 300.

### § 333. Sample ballots, instruction cards and stationery.

Sample ballots of each kind equal in number to ten per centum of the number of official ballots provided therefor, shall also be provided for every polling place for which official ballots are required to be provided. Such sample ballots shall be printed on paper of a different color from any of the official ballots and without numbers on the stubs, but shall, in all other respects, be precisely similar to the official ballots to be voted at that polling place. One of each kind of such sample ballots shall, at any time on the day of election, be furnished upon application to any voter entitled to vote at that polling place, and may be taken by him away from such polling place before receiving his official ballot or ballots.

Two instruction cards, printed in English, and two printed in each of such other languages as the officer or officers charged with providing them shall deem necessary, shall also be provided for each such polling place, containing in clear large type, in red ink, brief but clear instructions to voters as to the manner of voting, and, in smaller type, a copy of such sections of the penal law relating to crimes against the elective franchise as the board of elections shall select. Two sets of the sample ballots shall also be mounted on cards and displayed conspicuously at each polling place. The sample ballots so mounted

shall not be defaced and shall be kept free from marks of any kind. There shall also be provided two poll books, a suitable number of markers, designated as "distance markers," to indicate the distance of one hundred feet from the polling place, a sufficient supply of all blanks and forms which are needed by the election officers, heavy manila envelopes for returns and excess ballots, labels, sealing wax, pencils having black lead only, pens, penholders, blotting paper and red and black ink. All such articles herein enumerated are hereby designated as "stationery."

Derivation: Election Law, § 83.

Amended by L. 1913, ch. 821, L. 1917, ch. 703, in effect June 1, 1917.

Cross-references.—Officers providing ballots, stationery, etc. Election Law,

§ 341. Sample ballots, where voting machine is used. Election Law, § 398.

Forms.—For form for instruction card, see Forms (part 12, post).

### § 333-a. Additional sample ballots in the year nineteen hundred and fourteen; distribution of such ballots.

Added by L. 1914, ch. 243; repealed by L. 1916, ch. 537, in effect May 15, 1916.

### § 334. Blank forms for election officers.

1. *General provisions.* At each election at which official ballots shall be used the officers charged with the duty of furnishing official ballots shall furnish to the board of inspectors of each election district printed blanks upon which the election officers shall make written returns showing the performance of their duties as such officers. These blanks shall include blanks for a return by the ballot clerks, tally sheets for tallying the votes as canvassed, and blanks for a return by the inspectors of the votes as tallied. There shall be furnished for each election district three copies of each of the return sheet blanks and two copies of each of the tally sheet blanks required at that election district and no more. Each blank shall have at the top in large letters a descriptive title according to the nature of the blank. It shall also contain immediately under the title a heading, showing the kind of election, whether special or general, the date, the name of the county, and the number of the assembly district and of the election district in which it is to be used. The other printed matter to appear on the several blanks shall be as hereinafter provided.

2. *Forms of returns and tally sheets.* The return blanks and tally sheet blanks shall be as nearly as possible in the forms hereinafter provided, and all returns and tally sheets must be kept and filled out according to the forms so provided and in accordance with the instructions contained therein.

In printing the forms, the matter in brackets, [ ] being instructions to the printers, is to be omitted. The printer shall also omit the names and figures which are inserted in the forms for the purpose of illustration.

A separate tally sheet shall be provided for each office or consti-



tutional amendment or question submitted for which votes are to be canvassed.

3. *Penalty for refusal to fill out returns and tally sheets.* Any election officer who shall willfully neglect or refuse to fill out any return or tally sheet according to the directions of this chapter shall be guilty of a misdemeanor.

Derivation: Election Law, pt. of § 84.

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913.

*Production of non-existing tally sheet.*—There is no authority in the Election Law or otherwise to warrant an order of the Supreme Court directing inspectors of election to produce a tally sheet where the effect would be a direction to them to make a tally sheet from memory, or where nothing is counted from the statement of the canvass and no merely clerical mistakes exist therein, to direct the inspectors to recanvass the vote. *Peo. ex rel. Fiske v. Bantz* (1918), 222 N. Y. 676.

### § 335. Form of ballot clerk's return.

The ballot clerk's return shall be in the following form:

#### BALLOT CLERK'S RETURN.

General Election	County of.....
	.....Assembly District.
November ....., 19.....	.....Election District.

Total number of Official Ballots for [General Election]		
received .....	800	
Number cancelled before delivery to voters.....	2	
Number spoiled and returned by voters.....	20	
Number remaining unused.....	288	
Number of missing unused ballots.....	5	315
Number remaining to be accounted for in the ballot box....	485	
Number of detached stubs.....		
Number of stubs on unused ballots.....		
Total.....		

N. B.—This total must exactly equal the number of ballots received.

[Repeat the foregoing form for a return of each additional kind of ballot.]

STATE OF NEW YORK }  
COUNTY OF..... } ss:

The undersigned, being duly sworn, do depose and say, each for himself, that they have actually counted the cancelled ballots, and the ballots spoiled and returned by voters, and the detached stubs,



and that the foregoing is a correct return of the ballots delivered to us for the election held on the \_\_\_\_\_ day of November, 19\_\_\_\_, at the \_\_\_\_\_ Election District in the \_\_\_\_\_ Assembly District in the County of \_\_\_\_\_, and of the disposition thereof at such election.

Sworn to before me this \_\_\_\_\_ day of November, 19\_\_\_\_.

.....Ballot Clerk.  
.....Ballot Clerk.

### Inspector of Elections.

Derivation: Election Law, pt. of § 84.

Amended by L. 1913, ch. 821, L. 1918, ch. 323, in effect Apr. 24, 1918.

Cross-references. As to recount upon judicial investigation of ballots, see Election Law, § 341.

The duty of the inspectors to transcribe from the tally sheet on the official statement the totals is purely ministerial. *Matter of Stewart*, (1897) 24 App. Div. 201, 49 N. Y. Supp. 957, aff'd 153 N. Y. 545.

The tally sheet is an essential part of a canvass, and the inspectors may be compelled by mandamus to make their returns agree with the tally sheet. *Matter of Stewart*, (1897) 24 App. Div. 201, 49 N. Y. Supp. 957, aff'd 153 N. Y. 545.

Recount. The recount provided for in this section means a recount of the ballots which have been canvassed and recorded on a tally sheet on the theory that a mistake is due to the fact that the tally sheet did not set forth in the various columns all the ballots subject to canvass. *Matter of Stiles*, (1902) 62 App. Div. 549, 75 N. Y. Supp. 275.

Where it appears, simply, that the number in the final column of the tally sheet is 482 and that the ballot clerk's return states that the number of actual ballots actually voted is 484, a peremptory writ of mandamus will be issued requiring the election officers to reconvene and recount the ballots. *Matter of Stiles*, (1902) 62 App. Div. 549, 75 N. Y. Supp. 275.

Ballot clerks are necessary parties to a mandamus proceeding to compel election officials to reconvene and recount the ballots. *Matter of Stiles*, (1902) 62 App. Div. 549, 75 N. Y. Supp. 275.

Upon a recount the first step to be taken is to ascertain whether the total number of ballots stated in the final column of the tally sheet represents every ballot which could have been canvassed, and if it appears that there was a greater number to be accounted for the election officials should proceed to recount all the ballots found in the ballot box in conformity with the provisions of the Election Law. *Matter of Stiles*, (1902) 62 App. Div. 549, 75 N. Y. Supp. 275.

The ballot clerk's return is not conclusive as to the number of ballots actually voted. *Matter of Stiles*, (1902) 62 App. Div. 549, 75 N. Y. Supp. 275.

Demand only before declaration of result. - Any duty which the statute imposes that a board of canvassers shall, in the future, perform may be enforced by mandamus, but as there is no provision in the Election Law making it the duty of the canvassers to make recount after ballots have been placed in the ballot box and after the ballot box is locked, sealed and delivered to the custodian named in the statute mandamus will not lie to compel such recount. *People ex rel Brook v. War*, (1903) 179 N. Y. 171, rev'd 12 App. Div. 82, 84 N. Y. Supp. 809.

The Election Law does not impose a duty nor does it confer authority upon election officers to reconvene on the day subsequent to the completion of the canvass made by them and recount the ballots cast at the election, and counts have no power, express or implied, to compel such recount by mandamus. *Matter of Hearst v. Woolper*, (1905) 183 N. Y. 274, rev'd 110 App. Div. 346, 90 N. Y. Supp. 341.

**Entry on tally sheets of votes on submitted question.**—The submission of a question at an election is not rendered void by the fact that no tally sheet as to the question submitted was filed from any of the election districts and that the tally sheets filed as to the general ticket contain no statement that any votes were cast upon such question. *People ex rel. Williams v. Board of Canvassers*, (1905) 105 App. Div. 197, 94 N. Y. Supp. 994, aff'd 183 N. Y. 538.

### § 336. Description of tally sheets.

Repealed by L. 1913, ch. 821, in effect Dec. 17, 1913.

### § 337. Forms of return and tally of votes cast for presidential electors.

1. *Return.* The official return of votes cast for presidential electors shall be in the following form:

#### OFFICIAL RETURN of votes cast for PRESIDENTIAL ELECTORS.

General Election.	County of.....
	.....Assembly District.
November ....., 19 .	.....Election District.

Number of ballots voted was:

#### Straight Ballots:

For [Republican] candidates.....

For [Democratic] candidates.....

[Print the names of the parties in the order  
in which they appear on the ballot.]

Split Ballots .....

Ballots wholly blank (no vote being cast thereon for any  
candidate) .....

Void Ballots (no vote being counted thereon for any can-  
didate) .....

Total .....

**M. R.**—This total must exactly equal the number of ballots voted.



# OFFICIAL TALLY OF VOTES CAST FOR PRESIDENTIAL ELECTIONS

Serial Number	Quantity	Unit Price	Total Price
1	100	1.00	100.00
2	50	2.00	100.00
3	25	4.00	100.00
4	10	10.00	100.00
5	5	20.00	100.00
6	2	50.00	100.00
7	1	100.00	100.00
8	1	100.00	100.00
9	1	100.00	100.00
10	1	100.00	100.00
11	1	100.00	100.00
12	1	100.00	100.00
13	1	100.00	100.00
14	1	100.00	100.00
15	1	100.00	100.00
16	1	100.00	100.00
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2. *Tally.* The official tally of votes cast for presidential electors shall be in the following form: (See folder.)

Derivation: Election Law, pt. of § 84.

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913.

§ 338. Forms of return and tally of votes for officers other than presidential electors.

1. *Return.* The official return of votes for officers other than presidential electors shall be substantially in the following form with appropriate changes to indicate the vote for governor of each separate party or independent body by whom a candidate therefor was nominated:

OFFICIAL RETURN of Votes cast for [General Officers].  
 General Election. County of.....  
 .....Assembly District.  
 November.....19 . ..... Election District.

---

Return of votes cast for office of [Governor].

---

Total Number of Ballots Voted:

Number to be elected to said office:

Total number of Votes to be canvassed:

---

For the office of.....the candidates named below received the number of votes set opposite their respective names.

(Print here the names of the candidates as they appear on the ballot, with six lines in addition for names to be written in and if a candidate for governor was nominated by more than one political organization, repeat the candidate's name as many times as he was nominated, inserting the vote of each party or independent body separately.)

Blank Votes .....		_____
Void votes .....		
Total.....		

---



[Repeat the foregoing return for each office.]

The number of blank, void and protested ballots was:

The number of ballots which were taken from the ballot box by the chairman as excess ballots and placed with the spoiled and mutilated ballots, was:

STATE OF NEW YORK. }  
COUNTY OF ..... } ss:

The undersigned, being duly sworn, do depose and say, each for him-self, that the foregoing is a correct return of the ballots cast for the above offices at the election held on the                      day of 19     , at the                      Election District in the                      Assembly District in the County of                      .

Sworn to before me this	.....	Inspector.
..... day of November, 19	.....	Inspector.
.....	.....	Inspector.
.....	.....	Inspector.
.....	.....	Poll Clerk.
Ballot Clerk.	.....	Poll Clerk.

N. B. - To two out of the three returns tally sheets must be annexed

2. *Tally.* The official tallies of votes cast for officers other than presidential electors shall be in the following form with appropriate changes to indicate, where a candidate for governor was nominated by more than one political organization, the separate vote cast by each party or independent body for such candidate. (See folder.)

Derivation: Election Law, pt. of § 24.

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913.

Consolidators' note. - Instead of including the form at length three separate times, to indicate that the return of the votes for all officers is to be made in the same way, the new section gives the form but once and adds below it the following instruction: ("Repeat the foregoing form for a return of the votes for each additional office.")

### § 339. Forms of return and tally of votes upon questions submitted.

1. *Return.* The return sheet of votes upon constitutional amendments or other questions submitted, including town propositions and town appropriations, shall be in all respects like the form provided by this section for the return of votes for officers except in the following particulars:

(a) At the top of the sheet shall be printed the words "Official return of votes cast on (constitutional amendments, questions submitted, town propositions, or town appropriations, as the case may be)."

(b) Below the heading, in place of the words, "Return of votes cast for office of . . . . .," shall be printed the words, "Return of votes cast on question number (one) relating to (here give brief description)."

(c) The words "Number to be elected to said office," and "Total number of votes to be canvassed," shall be omitted.

(d) In place of the words "For the office of . . . . . the candidates named below received the number of votes set opposite their respective names," shall be printed the words, "Upon question number (one) relating to (here give same description as above directed) votes were cast as follows:

Votes in favor. . . . .

Votes against . . . . .

(e) The verification shall be so modified as to state that the return is of ballots cast on constitutional amendments and questions submitted.

2. *Tally.* The tally sheet for constitutional amendments or other questions submitted shall be in all respects like the form provided by this section for the tally of votes for officers except in the following particulars:

(a) At the top of the sheet shall be printed the words: "Official tally of votes cast on question number one" (or other brief designation).

(b) The matter at the top of the tally sheet, except the title, the blanks to be filled in for the purpose of specifying the date and place of election, and the words, "Total number of votes to be canvassed," shall be omitted.

(c) In place of the candidates' names in the left hand column shall be printed the words "For (or against, as the case may be) question No. (or other brief designation)."

(d) The lines of tally squares left on the form herewith printed for names of candidates not on the ballot shall be omitted.

(e) The fourth instruction for tallying shall be read as follows: "4. Tally once for each vote, whether counted for or against the question, or blank, or void."

We certify that the foregoing statement is correct.

Dated this . . . . . day of November, . . . . .

. . . . .  
 . . . . .  
 . . . . .  
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Board of Inspectors.

Derivation: Election Law, pt. of § 84

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913

Consolidators' note. The requirement of the printing of the blanks in the form prescribed is made to conform to sections 337 and 338, the title to the form being supplied.

### § 340. Number of official ballots.

The number of official ballots of each kind to be provided for each polling place for each election to be held thereat, except a village election held at a different time from a general election, shall be one and one-fourth times as many ballots as near as may be as there were names of voters on the register of voters of such district for such election at the close of the final regular meeting for such registration. In cities of the first class the officer or board charged with the duty of furnishing official ballots shall furnish one and one-fourth times as many official ballots of each kind to be provided for such election as there are voters entitled to vote thereat, as nearly as can be estimated by such officer or board. The number of official ballots of each kind to be provided for each polling place for a town meeting held at any time or a village or city election held at a different time from a general election, shall be one and one-fourth times the number of persons who will be entitled to vote thereat, as nearly as can be estimated by the officer charged with the duty of providing such ballots.

Derivation: Election Law, § 85, as amended by L. 1900, ch. 381, § 4.

Amended by L. 1913, ch. 820, in effect Dec. 17, 1913

Consolidators' note. The provision for the number of ballots in districts where but two meetings are held can be and is omitted.

### § 341. Officers providing ballots and stationery.

The county clerk, in each of the counties of Oneida and Broome, the commissioner of elections in any county having one commissioner of elections, the board of elections in every other county except a county within the city of New York, and in any such county the board of elections of such city, shall provide the requisite number of official and sample ballots, cards of instruction, two poll-books, distance markers, two tally sheets of each kind, three return blanks of each kind, pens, pen-holders, red and black ink, pencils having black lead, blotting paper, sealing wax and such other articles of stationery as may be necessary for the proper conduct of the election and the canvass of the votes, for each election district in the county for each election to be held thereat, except that when town meetings, city or village elections and elections for school officers are not held at the same time as a general election, the clerk of such town, city or village, respectively, shall provide such official and sample ballots and stationery for such election or town meeting. If the town meeting is held on general

\*election day ballots and sample ballots for town propositions and official and sample general ballots on which town officers only are to be voted for shall be provided by the town clerk in like manner and in the same form as at a town meeting held at any other time, and such town clerk shall also furnish return blanks for making returns on town propositions or questions, and for making returns of votes cast for candidates for town offices at such an election and the expense of furnishing such ballots, sample ballots and return blanks shall be a town charge. And the board of elections of the city of New York shall provide such articles for each election to be held in said city.

**Derivation:** Election Law, pt. of § 86 as amended by L. 1897, ch. 379, § 18; L. 1900, ch. 381, § 5; L. 1901, ch. 95, § 18, and ch. 615, § 1; L. 1902, ch. 176, § 1, and ch. 405, § 5; L. 1904, ch. 733, § 2; L. 1906, ch. 643, § 18.

**Amended by** L. 1911, ch. 649; L. 1913, ch. 821; L. 1916, ch. 454, in effect July 1, 1916.

**Cross-references.**—As to duty of county clerk in printing ballots, see note to Election Law, § 331. As to errors and omissions in ballots, see Election Law, § 341 and note.

**Separate ballot for candidates for town office.**—Section 311, as amended by L. 1913, ch. 821, so as to extend to all general elections the provision for a separate ballot for candidates for town offices which before had been limited to elections in even numbered years and § 316 as amended by the same chapter so as to strike out entirely the provision for a separate box for such separate ballots, and § 89 of the Town Law, providing that there shall be no such separate ballot, construed and held, that at a general election in an odd numbered year there need not be a separate ballot for candidates for town offices. *People ex rel. Shea v. Gilbert* (1919), 189 App. Div. 122, 178 N. Y. Supp. 327.

**Local option election.** The provision requiring boards of election to provide ballots for all electors except those at town meetings held at times other than a general election, the exception has no application to a town meeting held at the same time as a general election, and ballots furnished for a local option election thereof are valid. *Matter of Town of Bath* (1916), 93 Misc. 375; *Matter of Electors of Town of Wayland* (1916), 94 Misc. 417, 157 N. Y. Supp. 389.

## § 342. Public inspection of ballots.

Each officer or board charged with the duty of providing official ballots for any polling place, shall have sample ballots and official ballots provided, and in the possession of such officer or board, and open to public inspection as follows: The sample ballots five days before the election, and the official ballots four days before the election for which they are prepared, unless prepared for a village election or town meeting held at a different time from a general election, in which case the official ballot shall be so printed and in possession at least one day, and the sample ballots at least two days, before such election or town meeting. During the times within which the same are open for inspection as aforesaid, it shall be the duty of the officer or board charged by law with the duty of preparing the same, to deliver a sample ballot of the kind to be voted in his district to each qualified elector who shall apply therefor, so that each elector who may desire the same may obtain a sample ballot similar, except as regards color and the number on the stub, to the official ballot to be voted at the polling place at which he is entitled to vote.

**Derivation:** Election Law, pt. of § 86, as amended by L. 1897, ch. 379, § 18; L. 1900, ch. 381, § 5; L. 1901, ch. 95, § 18, and ch. 615, § 1; L. 1902, ch. 176, § 1, and ch. 405, § 5; L. 1904, ch. 733, § 2; L. 1906, ch. 643, § 18.

**§ 343. Distribution of ballots and stationery.**

The board of elections of each county, except those counties which are wholly within the city of New York, shall deliver at its office to each town or city clerk in such county, except in New York city and in the city of Buffalo, on the Saturday before the election for which they are required, the official and sample ballots, cards of instruction and other stationery required to be provided for each polling place in such town or city for such election. It is hereby made the duty of each such town or city clerk to call at the office of such board of elections at such time and receive such ballots and stationery. In the cities of New York and Buffalo the board or officer required to provide such ballots and stationery shall cause them to be delivered to the board of inspectors of each election district at least one-half hour before the opening of the polls on each day of election. Each kind of official ballots shall be arranged in a package in the consecutive order of the numbers printed on the stubs thereof, beginning with number one. All official and sample ballots provided for such election shall be in separate sealed packages, clearly marked on the outside thereof with the number and kind of ballots contained therein and indorsed with the designation of the election district for which they were prepared. The instruction cards and other stationery provided for each election district shall also be inclosed in a sealed package or packages, with a label on the outside thereof showing the contents of each such package. Each such town and city clerk receiving such packages shall cause all such packages so received and marked for any election district to be delivered unopened and with the seals thereof unbroken to the inspectors of election of such election district one-half hour before the opening of the polls of such election therein. The inspectors of election receiving such packages shall give to such town or city clerk, or board, delivering such packages a receipt therefor specifying the number and kind of packages received by them, which receipt shall be filed in the office of such clerk or board. Town, city and village clerks required to provide the same for town meetings, city and village elections held at different times from a general election, shall in like manner, deliver to the inspectors or presiding officers of the election at each polling place at which such meetings and elections are held, respectively, the official ballots, sample ballots, instruction cards and other stationery, required for such election or town meeting, respectively, in like sealed packages marked on the outside in like manner, and shall take and file receipts therefor in like manner in their respective offices.

Derivation: Election Law, § 87, as amended by L. 1897, ch. 379, § 19; L. 1905 ch. 643, § 19.

Amended by L. 1916, ch. 537, in effect May 13, 1916.



**Consolidators' note.**—In the last sentence "and the board of the city of New York, and in the city of Buffalo the commissioner of elections, required to provide the same for elections held therein, respectively," is omitted. "Required to provide," etc., is doubly unnecessary, and the whole provision is mere repetition, as the previous provisions governing the distribution of ballots and stationery in New York city and Buffalo are broad enough to include special elections.

**Cross-references.**—Failure to deliver official ballots. Penal Law, § 761 (part 5, post). Distribution where voting machine is used. Election Law, § 491.

**Forms.** For town clerk's or city clerk's receipt for official ballots received from county clerk, and for election inspector's receipt for official ballot received from town or city clerk, see Forms (part 12, post).

### § 344. Errors and omissions in ballots.

Upon affidavit, presented by any voter, that an error or omission has occurred in the publication of the names or description of the candidates nominated for office, or in the printing of sample or official ballots, the supreme court, or a justice thereof, may make an order requiring the board of elections or other officer or board charged with the duty in respect to which such error or omission occurs to correct such error, or show cause why such error should not be corrected. The board of elections or such other officer or board shall, upon his own motion, correct without delay any patent error in the ballots which they may discover, or which shall be brought to their attention, and which can be corrected without interfering with the timely distribution of the ballots to the inspectors for use at such election.

**Derivation:** Election Law, § 88.

**Amended by L. 1916, ch. 537, in effect May 15, 1916.**

**Latent defect in ballot.**—Innocent voters will not be disfranchised because of a latent defect in the official ballot furnished by the State, not discernible on inspection, the defect consisting in the unauthorized insertion therein by a public official charged with the duty of making up and printing the ballots of names of candidates, in a party column, not duly nominated by such party. *People ex rel. Hirsch v. Wood* (1895), 148 N. Y. 142.

Where the term of office of a commissioner of highways is fixed by statute at three years, no effect can be given to the words "two years" appearing after the name of a candidate for that office, on the ballots cast at an election at which he was elected. *People ex rel. Lane v. Case*, (1892) 46 N. Y. St. Rep. 219, 19 N. Y. Supp. 625.

**Objections, when to be taken.**—Objections to the regularity of the official ballot as made up by the county clerk must be taken before election and cannot be taken after the ballots have been used by the voters, in order to effect the count. *Matter of Hirsch*, (1895) 14 Misc. 317, 71 N. Y. St. Rep. 26, 36 N. Y. Supp. 19.

It is too late after an election to hear complaints as to the form of official ballots. *People ex rel. Williams v. Board of Canvassers*, (1905) 105 App. Div. 197, 94 N. Y. Supp. 996, aff'd 183 N. Y. 538.

Where the names of the nominees of a citizens' ticket for school commissioners are placed by the clerk in the same column with the Socialist Labor ticket, the error is one to which objection must be made before the election. *Matter of Houligan*, (1907) 55 Misc. 5, 106 N. Y. Supp. 205.

**Marked ballot.**—The fact that the column of the local organization has been filled out with the State nominees of a party of a similar faith or prin-



copies does not make the ballot a marked one. *Matter of Hursh*, (1895) 14 Misc. 37, 71 N. Y. St. Rep. 26, 36 N. Y. Supp. 19.

Additional words improperly placed on stubs of ballots held not to render ballots void. *People ex rel Williams v. Board of Canvassers*, (1905) 100 App. Div. 197, 94 N. Y. Supp. 998, aff'd 183 N. Y. 239.

Right to vote for office not on official ballot → Voters may write on their ballots the name of a person for an office which the law requires to be filled at the election, where, by mistake or intention, the clerk has omitted from the ballot the name of the office, in violation of the Election Law. *People ex rel Goring v. President*, (1894) 144 N. Y. 610 aff'd 9 Misc. 216.

Effect of failure of voter to make application — Although this section provides a method by which errors and omissions in ballots may be corrected by direction of the court upon the application of any voter, the failure of a voter to make such an application does not result in his disfranchisement to vote for any office at a general election in respect of which there is a vacancy which should be filled. *Matter of Deitz*, (1914), 87 Misc. 610, 617, 150 N. Y. Supp. 43.

### § 345. Unofficial ballots.

If the official ballots required to be furnished to any town or city clerk, or board, shall not be delivered at the time required, or if after delivery shall be lost, destroyed or stolen, the clerk of such town or city, or such board, shall cause other ballots to be prepared as nearly in the form of the official ballots as practicable, but without the indorsement, and upon the receipt of ballots so prepared from such clerk or board, accompanied by a statement under oath that the same have been so prepared and furnished by him or them, and that the official ballots have not been so delivered, or have been so lost, destroyed or stolen, the inspectors of election shall cause the ballots so substituted to be used at the election in the same manner, as near as may be, as the official ballots. Such ballots so substituted shall be known as unofficial ballots.

Derivation: Election Law, § 89.

Cross-references.—Unofficial ballots where voting machine is used. Election Law, § 406. When unofficial ballots may be voted. Election Law, § 360.

## ARTICLE 10.

## CONDUCT OF ELECTIONS AND CANVASS OF VOTES.

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## § 350. Opening the polls.

The inspectors of election, poll clerks and ballot clerks of each election district shall meet at the polling place therein at least one-half hours before the time set for opening the polls at each election for which official ballots are required to be provided, and shall proceed to arrange the space within the guard-rail and the furniture thereof, including the voting booths, for the orderly and legal conduct of the election.

The inspectors of election shall then and there have the ballot boxes required by law for the reception of ballots to be voted thereat; the box for the reception of ballots found to be defective in printing or mutilated before delivery to, and ballots spoiled and returned by, voters; the box for the stubs of voted and spoiled ballots; the sealed packages of official ballots, sample ballots and instruction cards and distance markers, poll books, tally sheets, return blanks and other stationery required to be delivered to them for such election; and if it be an election at which registered voters only can vote, the register of such voters required to be made and kept therefor.

The inspectors shall thereupon open the sealed packages of instruction cards and cause them to be posted conspicuously, at least one, and if printed in different languages, at least one of each language, in each of the voting booths of such polling place, and at least three of each language in which they are printed in or about the polling place; shall open the sealed packages of official ballots and sample ballots, and place them in charge of the ballot clerks, and shall place the poll books in charge of the poll clerks, and shall cause to be placed at a distance of one hundred feet from the polling place the visible markers designated herein as "distance markers," to prohibit "loitering or electioneering" within such distance. They shall also, before any ballots are cast, see that the voting booths are supplied with pencils having black lead only, unlock the ballot boxes, see that they are empty, allow the watchers present to examine them, and shall lock them up again while empty in such manner that the watchers present and persons just outside the guard-rail can see that such boxes are empty when they are relocked.

After such boxes are so relocked they shall not be unlocked or opened until the closing of the polls of such election, and, except as authorized by law, no ballots or other matter shall be placed in them after they are so relocked and before the announcement of the result of such canvass and the signing of the original statement of canvass and the two certified copies thereof. The instruction cards and distance markers posted as provided by law shall not be taken down, torn or defaced during such election. The ballot clerks with the official and sample ballots, the inspectors with such boxes and register of voters, and the poll clerks with their poll books, shall be stationed as near each other as practicable within such inclosed space. One of the inspectors shall then make proclamation that the polls of the election are open, and of the time in the afternoon when the polls will be closed.

**Derivation:** Election Law, § 100.

**Cross-References.** — Election officers to take additional oath before opening polls. Election Law, § 357. Time of opening and closing polls. Election Law, § 291. Meeting of inspectors and poll clerks before opening of polls when voting machines are used. Election Law, § 407. Removal, mutilation or destruction of election supplies, poll lists or cards of instruction. Penal Law, § 788 (part 5, post). Removal of official ballots before close of polls. Penal Law, § 784 (part 5, post).

**Forms.** — For oath to be taken by election officers before opening of polls and for proclamation of opening the polls, see Forms (part 12, post).

### § 351. Persons within the guard-rail.

From the time of the opening of the polls until the announcement of the result of the canvass of the votes cast thereat, and the signing of the official returns of such canvass and the copies thereof, the boxes and all official ballots shall be kept within the guard-rail. No person shall be admitted within the guard-rail during such period, except inspectors, poll clerks, ballot clerks, duly authorized watchers, persons admitted by the inspectors to preserve order or enforce the law, and persons duly admitted for the purpose of voting; provided, however, that candidates for public office voted for at such polling place may be present at the canvass of the votes.

Derivation: Election Law, § 101

Cross-references.—Unlawful presence within guard-rail. Penal Law, § 764 (part 5, post).

### § 352. Watchers; challengers; electioneering.

Each political party or independent body duly filing certificates of nomination of candidates for officers to be filled at any such election, may, by a writing signed by the duly authorized county, city, town or village committee of such political party or independent body, or by the chairman or secretary thereof charged with that duty, and delivered to and filed with one of the inspectors of election, appoint not more than two watchers to attend each polling place thereof. Such committee, chairman or secretary thereof for a city, county, town or village shall not appoint watchers for any polling place outside of such city, county, town or village respectively. Each watcher must be a qualified elector of the city or county in which the election district for which he or she is appointed a watcher shall be located. Such watchers may be present at such polling place and within the guard-rail from at least fifteen minutes before the unlocking and examination of any ballot box at the opening of the polls of such election until after the announcement of the result of the canvass of the votes cast thereat and the signing of the returns of the canvass by the inspectors. A reasonable number of challengers, at least one person of each such party or independent body, shall be permitted to remain just outside of the guard rail of each such polling place, where they can plainly see what is done within such rail outside of the voting booths, from the opening to the close of the polls thereat. Each challenger must be a qualified elector of the city or county in which the election district for which he or she is appointed a challenger is located. No person shall, while the polls are open at any polling place, do any electioneering within such polling place or within one hundred feet therefrom in any public street or in any building or room, or in a public manner, and no political banner, poster or placard shall be allowed in or upon such polling place during any day of registration or of the election.

Derivation: Election Law, § 102.

Amended by L. 1910, ch. 428, L. 1911, ch. 649; L. 1913, ch. 821, and L. 1914, ch. 242, L. 1918, ch. 323, in effect Apr. 24, 1918.

Cross References.—Misconduct of watchers. Penal Law, § 762. Unlawful electioneering, displaying of political posters, etc., at polling places. Penal Law, § 764.

Forms.—For certificate of appointment of watchers, see Forms (part 12, post).

Appointment of women watchers at polling places may be made by duly organized clubs of suffragists and anti-suffragists in any county or town at which a woman suffrage constitutional amendment is submitted to the voters, but there can be but one woman watcher in favor of and one opposed to such amendment at any one polling place. Report of Attorney-General, July 8, 1915.

Distance markers should clearly inform the electors of the prohibition against electioneering. Report of Atty. Gen., (1895) 245.

### § 353. General duties of inspectors.

One of the inspectors of election at each polling place shall be designated by the board of inspectors of election to receive the ballots from the voters voting or if a majority of the inspectors shall not agree in such designation, they shall draw lots for such position. If it be an election for which voters are required to be registered, the other inspectors shall, before any ballots are delivered by the ballot clerks to a voter, ascertain whether he is duly registered. The ballot clerks shall not deliver any ballot to such voter until the inspectors announce that he is so registered. As each voter votes, the inspectors shall

check his name upon such register and, in a city of over one million inhabitants, shall enter therein in the column provided therefor opposite the name of such voter, the consecutive number upon the stub of the ballot or set of ballots voted by him. The inspector shall forthwith upon detaching the stub from any official ballot deposit the same in the box provided for detached stubs.

Derivation: Election Law, § 103, pt. of subd. 1.

Amended by L. 1919, ch. 594, in effect Oct. 1, 1919.

**Cross-References.**— *Misdemeanors in relation to elections.* Penal Law, § 764 (part 5, post). *Misconduct of election officers.* Penal Law, § 762 (part 5, post). *Violation of Election Law by public officer.* Penal Law, § 763 (part 5, post).

*Inspectors of election have equal power one with another.* People v. Van Slyck, 4 Cow. 297.

*Inspectors of election are merely ministerial officers.*— People ex rel. Sherwood v. State Board, (1891) 129 N. Y. 360, People v. Pease, (1893) 27 N. Y. 45, Goetschius v. Mattheson, (1874) 61 N. Y. 420, People ex rel. Stapleton v. Bell, (1890) 119 N. Y. 175; People ex rel. Sherwood v. Board, 129 N. Y. 372; Matter of Hamilton, (1894) 90 Hun 511, 30 N. Y. Supp. 499; People v. Van Slyck, 4 Cow. 297; People ex rel. Borgis v. Doe, (1905) 100 App. Div. 670, 90 N. Y. Supp. 389.

### § 354. General duties of ballot clerks.

Ballot clerks shall fold and deliver the ballots to voters. Ballots shall be delivered in numerical order beginning with number one. When the ballots are in sets they shall only be delivered in sets. If a ballot is found to be defective or mutilated before it is delivered to the voter, its stub and the stubs of all other ballots in the set shall immediately be detached and placed in the box for stubs, and all the ballots of that set shall immediately be marked "canceled" and placed in the box for spoiled and mutilated ballots. If a voter returns a ballot as defective, mutilated, defaced, or wrongly marked, he shall also return all the other ballots of the set, if any, and the ballot clerks shall likewise remove their stubs, placing all the stubs in the box for stubs and all the ballots of the set in the box for spoiled or mutilated ballots, first marking the ballots "canceled." In each case the voter shall receive another ballot, or set of ballots, unless not entitled thereto under section three hundred and fifty-eight.

Upon each delivery of official ballots, the ballot clerks shall announce the voter's name and the number on the stub, and they shall make a similar announcement when any ballot is returned to them.

The ballot clerks shall keep a record of all ballots deposited in the box for spoiled and mutilated ballots.

Derivation: Election Law, § 103, subd. 2.

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913.

**Cross-References.**— See note to preceding section.



**§ 355- General duties of poll clerks during the taking of the vote.**

1. Poll clerks shall keep a record of the persons voting or offering to vote. In an election district or at a special election where poll-books separate from the register are not required, the columns of the poll-books sections of two copies of the register, and in cases where the registration of electors was required to be personal, the column for "signature or statement number of elector" in a copy of the register other than the one containing the signature or statement number of the elector made on a day of registration, shall be used for such record and shall constitute the poll-book.

2. Each poll clerk at each polling place for which official ballots are required to be provided, at any such election in a city of over one million inhabitants, and at any such election elsewhere which is not held at the time of a general election, shall have a poll-book for keeping the list of electors voting or offering to vote thereat at the election. Such book shall have nine columns headed respectively: "Number of elector," "Names of electors," "Residence of electors," "Age of electors," "Signature or statement number of elector," "Signatures compared by inspector," "Number on ballots delivered to electors," "Number on ballots voted," and "Remarks." The column headed "Signature or statement number of elector" shall have printed above each horizontal line the words "the foregoing statements are true;" provided, however, that the columns for "Signature or statement number of elector" and "Signatures compared by the inspector," when the poll-book is prepared for use at a special election in an election district wholly outside of a city or village having five thousand inhabitants or more, may, in the discretion of the board or officer supplying such books, be omitted therefrom. The pages of such poll-book shall be numbered consecutively.

3. One of the poll clerks at each polling place shall be designated by the board of inspectors of election to question each elector as required by law and it shall be his duty to question each elector in respect to his name, his age unless it be stated as over thirty years, his residence by street and number, or if it has no street



number, a brief description of the locality thereof. In an election district where the poll-book is separate from the register, the answer of each elector to each such question shall be entered in ink by each poll clerk in the appropriate column of the poll-book kept by him, the name of each elector being placed in the alphabetical order of the first letter of his surname. Any elector whose registration was required to be personal, shall, previous to the receipt of an official ballot, sign his name by his own hand and without assistance, using an indelible pencil or pen and ink, below the words "the foregoing statements are true" in the poll-book kept by the poll clerk who shall be designated by the chairman of the board of inspectors. No such signature shall be required of an elector whose registration was not required to be personal.

4. After an elector, whose registration was required to be personal, shall have so signed, and before an official ballot shall be given to him, one of the inspectors other than the inspector who receives the ballots from the electors shall compare the signature made in the poll-book with the signature theretofore made by the elector in the register on registration day, and if said signature is the same, or sufficiently similar to the signature written on registration day, as to identify it as being written by the same person who wrote the signature on registration day, said inspector shall thereupon orally announce that fact and shall also immediately certify that fact by writing his initials after such signature, in the column headed "signatures compared by inspector," except that where the poll-book is a part of the register, he shall certify such fact by writing his initials after the signature so made by the elector. The inspector who shall so certify shall be chosen by lot by the board previous to the opening of the polls on election day, and if said inspector so chosen shall absent himself during the day, the board of inspectors shall fill his place by choosing by lot from the inspectors present another of the inspectors other than the inspector who receives the ballots from the electors.

5. If, on registration day, an elector whose registration was

required to be personal had alleged his inability to so sign, then one of the poll clerks designated by the chairman of the board of inspectors shall read the same list of questions to the elector as were required to be read on registration days from a book to be provided for election day, and to be known as "identification statements for election day," and said poll clerk shall write the answers of the elector thereto. Each of these statements shall be numbered and a number corresponding to the number on the statement sheet shall be entered, opposite the name of such elector answering the questions, in the column of the poll-book entitled "Signature or statement number of elector." The questions answered on registration day by the elector shall not be turned to or inspected until all the answers to said questions shall have been written down on election day by the poll clerk. Any person who shall prompt an elector in answering any questions provided in this subdivision shall be guilty of a felony. At the bottom of each such list of questions shall be printed the following statement: "I certify that I have read to the above named elector each of the foregoing questions and that I have duly recorded his answers as above to each of said questions," and said poll clerk who has made the above record shall sign his name to said certificate and date the same, and note the time of day of making such record.

6. The comparison of the signature of an elector made on registration and election days, and a comparison of the answers made by an elector on registration and election days, shall be had in full view of the watchers, and the right to challenge electors shall exist until the ballot shall have been deposited in the ballot box. If the signature of the elector or the answers to the questions made by the elector do not correspond, then it shall be the privilege of the watchers and challengers to challenge and the duty of each inspector to challenge, unless some other authorized person shall challenge.

7. Previous to each delivery of an official ballot or set of official ballots by the ballot clerk to an elector, in an election district and at any election where the poll-book is separate from the

register, each poll clerk shall enter upon his poll-book in the first column the number of the elector, in the successive order of the delivery of ballots to electors. Each poll clerk in every election district of the state, at any election where official ballots are used, shall enter upon his poll-book in the appropriate column the printed number upon the stub of the ballots delivered to each elector, and the number on the ballots voted by him. If the ballot or set of ballots delivered to any elector shall be returned by him to the ballot clerk, and he shall obtain a new ballot or set of ballots, each poll clerk shall write opposite the elector's name on the poll book kept by such clerk, in the proper column, the printed number on the stub of such ballot or additional set of ballots.

4. Each poll clerk shall make a memorandum upon his poll-book opposite the name of each person who shall have been challenged and taken either of the oaths prescribed upon such challenge, or who shall have received assistance in preparing his ballot and shall also enter upon the poll-book, opposite the name of such person, the names of the election officers or persons who render such assistance, and the cause or reason for such assistance by the elector assisted.

9. As each elector offers his ballot or set of ballots which he intends to vote to the inspector, each poll clerk shall report to the inspector whether the number entered on the poll-book kept by him as the number on the ballot or set of ballots last delivered to such elector is the same as the number on the stub of the ballot or set of ballots so offered. As each elector votes, each poll clerk shall enter in the proper column on his poll-book the number on the detached stub of the ballots voted.

**Derivation:** Subd. 1 is Election Law, § 103, subd. 3, as amended by L. 1908, ch. 521, § 2. Subd. 2 is Election Law, § 103, subd. 4, as added by L. 1908, ch. 521, § 3.

**Amended by** L. 1910, ch. 428; L. 1911, ch. 649; L. 1913, ch. 321; L. 1916, ch. 537; L. 1918, ch. 323; L. 1919, ch. 504, in effect Oct. 1, 1919.

**Cross-references.**—See note to Election Law, § 353.

**Forma.**—For poll list, see Forma (part 12, post).

**Requirement that elector sign his name in inspector's register at time of registration.**—The provision of the Election Law made applicable to cities only of a million or more inhabitants, requiring an elector to sign his name in the inspector's register at the time of registration, is a reasonable and constitutional enactment. *Abearn v. Elder* (1909), 195 N. Y. 493, 88 N. E. 1069, aff'g 130 App. Div. 900.

The distinction between greater and smaller cities and country places with respect to methods and details for safeguarding elections is necessary and proper and violates no constitutional restriction. The constitutional provision forbidding the enactment of private or local bills for the conduct of elections is to be read in connection with that requiring the Legislature to make laws "for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage." State Const., art. 2, §§ 1, 4; *Abearn v. Elder* (1909), 195 N. Y. 493, 88 N. E. 1069, aff'g 130 App. Div. 900.

So long as a law regulating the right of suffrage does not add to the qualifications required of electors by the Constitution the legislative will is supreme. *Abearn v. Elder* (1909), 195 N. Y. 493, 88 N. E. 1069, aff'g 130 App. Div. 900.

### § 356. Delivery of ballots to voters.

While the polls of the election are open, the voters entitled to vote and who have not previously voted thereat, may enter within the guard-rail at the polling place of such election for the purpose of voting, in such order that there shall not at any time be within such guard-rail more than twice as many voters as there are voting booths thereat, in addition to the persons lawfully within such guard-rail for other purposes than voting. The voter shall enter within the guard-rail through the entrance provided, and shall forthwith proceed to the inspectors and give his name, and, if in a city or village of five thousand inhabitants or over, his residence by street and number, or if it have no street number, a brief description of the locality thereof, and if required by the inspectors shall state whether he is over or under twenty-one years of age. One of the inspectors shall thereupon announce the name and residence of the voter in a loud and distinct tone of voice. No persons shall be allowed to vote in any election district at any election where voters are required to be registered unless his name shall be upon the registration books of such election district.

The right of any person to vote whose name is on such register shall be subject to challenge. If such voter is entitled to vote

thereat and is not challenged, or if challenged and the challenge be decided in his favor, one of the ballot clerks shall then deliver to him one official ballot or a set of official ballots, folded by such ballot clerk in the proper manner for voting, which is: First, by bringing the bottom of the ballot up to the perforated line, and second, by folding both sides to the center, or towards the center, in such manner that when folded the face of each ballot shall be concealed, and the printed number on the stub and the indorsement on the back of the ballot shall be visible, so that the stub can be removed without removing any other part of the ballot, and without exposing any part of the face of the ballot below the stub, and so that when folded the ballot shall not be more than four inches wide.

No person other than an inspector or ballot clerk shall deliver to any voter within such guard-rail any ballot, and they shall deliver only such ballots as the voter is legally entitled to vote, and also the sample ballot when the same is asked for.

*Derivation:* Election Law, § 104, subd. 1.

*Cross-references.*—Delivery of ballot by a person not a ballot clerk. Penal Law, § 764 (part §, post). When delivery of ballots must cease. Election Law, § 291.

### § 357. Assistance to disabled or illiterate voters.

Any voter who shall, at the time of registration, have made oath of illiteracy, as prescribed by section one hundred and sixty-four of this chapter; or who, having been duly registered personally, shall state under oath to the inspectors of election on the day of election that, by reason of some accident, the time and place of which he must specify, or of disease, the nature of which he must also specify, he has, since the day upon which he registered, lost the use of both hands, or become totally blind, or afflicted by such degree of blindness as will prevent him, with the aid of glasses, from seeing the names printed upon the official ballot, or so crippled that he can not enter the voting booth and prepare his ballot without assistance; or any duly registered voter in an election district who is not required by law to register personally, and who did not

register personally, who is unable to write by reason of illiteracy, or is physically disabled in one or more ways described in section one hundred and sixty-four of this chapter, and who shall make the statement under oath to the inspectors in the form required in said section, may choose two of the election officers, both of whom shall not be of the same political faith, to enter the booth with him to assist him in preparing his ballots. At any town meeting or village election where the election officers are all of the same political faith, any voter entitled to assistance as herein provided may select one of such election officers and one voter of such town or village of opposite political faith from such election officer so selected, to render such assistance.

Such election officers or persons assisting a voter shall not in any manner request or seek to persuade or induce any such voter to vote any particular ticket, or for any particular candidate, and shall not keep or make any memorandum or entry of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person the name of any candidate voted for by such voter, or which ticket he has voted, except they be called upon to testify in a judicial proceeding for a violation of this chapter, and each election officer, before the opening of the polls for the election, shall make oath that he "will not in any manner request, or seek to persuade, or induce any voter to vote any particular ticket or for any particular candidate, and that he will not keep or make any memorandum or entry of anything occurring within the booth, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by any voter, or which ticket he has voted, or anything occurring within the voting booth, except he be called upon to testify in a judicial proceeding for a violation of the election law." The same oath shall be taken by every voter rendering such assistance, as provided for above, and any violation of this oath shall be a felony punishable upon conviction by imprisonment in a state prison for not less than two nor more than ten years.

No voter except as herein provided shall otherwise ask or receive



the assistance of any person within the polling place in the preparation of his ballot, or divulge to any one within the polling place the name of any candidate for whom he intends to vote or has voted.

**Derivation:** Election Law, § 104, subd. 2.

**Amended by** L. 1919, ch. 370, in effect May 6, 1919.

**Cross-references.**—Inducing voter to vote particular ballot and revealing vote. Penal Law, § 764 (part 5, post). Registration of illiterate and disabled voters. Election Law, § 164.

**Forma.**—For form of oath to be taken by election officers before opening of polls; form of oath to be administered to illiterate or disabled voters, see *Forma* (part 12, post).

**Elector taking oath entitled to assistance.**—"A voter taking the physical disability oath is entitled to the assistance provided." Opinion of Atty.-Gen.

**Inspectors not judges of kind or extent of disability.**—"The inspectors of election do not seem to be made, in any way by this statute, the judges of the kind or extent of the 'physical disability' with which the voter is afflicted." The voter himself must, however, declare, under oath, that by reason thereof 'he is unable to prepare his ballot without assistance.' This is quite analogous to the requirements of the general election laws of the State, that the voter when challenged may take the 'general oath,' and if he persists in his claim to vote, the Court of Appeals has held that it is imperative on the inspectors to receive the vote and deposit the same in the ballot box. See *People v. Pease* (1863), 27 N. Y. 53; *Goetcheus v. Matthewson et al.* (1874), 61 N. Y. 420.

"The statutory provision cited is a new one, but the question suggested is one frequently asked and will necessarily arise before the inspectors of election on election day, and while the construction above indicated may not be entirely free from doubt, yet after the best consideration which I have been able to give the matter I am of the opinion that the statute will be complied with, if the voter so insists, by taking the oath provided.

"The voter must, however, see to it that this declaration is not false, in fact, for if it is he is liable to be prosecuted for perjury; and while we may admit that the inspectors would have no right to inquire into the truth or falsity of the voter's declaration, no such objection exists to the qualifications or authority of a grand jury to make this inquiry." Opinion of Atty.-Gen.

## § 357-a. Assistance to physically disabled voters.

If on registration day any duly qualified voter make a claim that he is and on election day the fact of such physical disability be plainly manifest to the inspectors of election in the polling place where such voter is entitled to vote, then in such case such voter

shall be permitted to have the assistance of his or her father, mother, brother, sister, husband, wife or child he may select or designate to aid him in the marking, preparation and casting of his ballot. The poll clerk shall note in the poll book, opposite the name of such voter, the statement "voter obviously physically incapacitated from marking ballot," and the name of the person assisting such voter. Such person assisting a voter shall not in any manner request or seek to persuade or induce any such voter to vote any particular ticket, or for any particular candidate, and shall not keep or make any memorandum or entry of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person the name of any candidate voted for by such voter, or which ticket he has voted, except he be called upon to testify in a judicial proceeding for a violation of this chapter, and each person before entering the booth to render such assistance shall make an oath that he "will not in any manner request or seek to persuade, or induce any voter to vote any particular ticket, or for any particular candidate, and will not keep or make any memorandum or entry of anything occurring within the booth, and will not, directly or indirectly, reveal to any other person the name of any candidate voted for by any voter, or which ticket he has voted, or anything occurring within the voting booth, except he be called upon to testify in a judicial proceeding for a violation of the election law." Any violation of this oath shall be a felony punishable upon conviction by imprisonment in a state prison for not less than two nor more than ten years. Any person voting, or offering to vote, who shall falsely pretend or represent to the inspectors of election or any of them, that he is incapacitated to mark or prepare his ballot, for the purpose of being enabled to have the aid and assistance allowed and provided for in the preceding section, shall be guilty

of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years, or both such fine and imprisonment.

Added by L. 1919, ch 370, in effect May 5, 1919.

**§ 358. Preparation of ballots by voters; intent of voters.**

On receiving his ballot the voter shall forthwith and without leaving the inclosed space retire alone, unless he be one that is entitled to assistance in the preparation of his ballot, to one of the voting booths, and without undue delay unfold and mark his ballot as hereafter prescribed. No voter shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and voters waiting to occupy the same.

It shall be unlawful to deface or tear an official ballot in any manner; or to erase any printed line, letter or word therefrom; or to erase any name or mark written thereon by a voter. If a voter wrongly mark, deface, or tear a ballot or one of a set of ballots, he may successively obtain others, one set at a time, not exceeding in all three sets, upon returning to the ballot clerks each set of ballots already received.

The voter shall mark his ballot with a pencil having black lead as follows and not otherwise:

1. To vote for any candidate on any ballot, except for an entire group of presidential electors by means of a single mark as hereinafter provided, he shall make a cross X mark in the voting square at the left of the candidate's name.

2. To vote for any candidate not on the ballot, he shall write the candidate's name on a line left blank in the appropriate place.

3. To vote for an entire group of presidential electors, nominated by any party, he shall make a cross X mark in the circle above the party column. If, on a ballot for presidential electors, the voter shall make such mark in the circle above a party column and also before the name of a candidate in such column, or in the voting squares before the names of two or more candidates in such column, without making a voting mark in any voting square of another column and without writing in any name, such individual voting marks shall be treated as surplusage and his vote shall be deemed to have been cast for all of the candidates whose names appear in the party column below such circle. If, however, a ballot for presidential electors shall be so marked in a party circle and in one or more voting squares in the column under such circle and also in any voting square or squares in another column or columns or a name or names be also written in, the vote on a ballot so marked shall only be counted for the candidates so specially indicated.

4. If, on a ballot for presidential electors, the voter shall make a cross X mark in the circle above a party column, and no voting mark in any voting square of the same column, and shall also make a cross X mark in the voting square before the name of a candidate in another party column, or in such squares before the names of two or more candidates in one or more of such other party columns, or writes in a name or names, he shall be deemed to have voted for the candidates whose names are thus specially indicated and also for all of the candidates whose names appear in the column below the circle containing such mark, except those whose names are printed in the latter column on a horizontal line with the names so specially indicated; provided, however, that if the voter shall make a cross X mark in the circle above a party column and also cross X marks in voting squares before any two or more names on the same horizontal line or write a name in a blank space on a horizontal line with one or more names so individually marked, his vote shall be counted only for candidates for the office of presidential elector which, by individual voting marks or by writing, he shall have specially indicated, though there be no such marks in the column under such circle.

5. To vote on any constitutional amendment or question submitted, he shall make a cross X mark in the appropriate voting square at the left of the question as printed on the ballot.

A cross X mark shall consist of any stright line crossing any other straight line, at any angle, within a circle or voting square. Any mark other than a cross X mark or any erasure of any kind shall make the whole ballot void except that when such mark or erasure is made in a voting square it shall make the ballot blank only as to the office or question in which such mark or erasure occurs; but no ballot shall be declared void or partially blank because a cross X mark thereon is irregular in form. Any ballot which is defaced or torn by the voter shall be void. If a voter shall do any act extrinsic to the ballot itself, such as inclosing any paper or other article in the folded ballot, such ballot shall be void. If the elector marks more names than there are persons to be elected to an office, or if for any other reason it is impossible to determine the elector's choice of a candidate for an office to be filled, his vote shall not be counted for such office but shall be returned as a blank vote for such office. Where, in the case of a candidate for governor or member of assembly, the candidate is nominated by two or more political organizations, and the voter makes a cross X mark in two or more voting spaces or squares, his vote for such candidate shall be counted, but he shall not be recorded in the tally sheet or returns as voting with any particular party or independent body for such candidate.

Derivation: Election Law, § 105, as amended by L. 1908, ch. 335, § 6.

Amended by L. 1911, ch. 296; L. 1913, ch. 821; L. 1916, ch. 537; L. 1918, ch. 323, in effect Apr. 24, 1918.

Consolidators' note.— Election Law, § 105, as amended by L. 1908, ch. 335. The voting mark printed X not X: in "if a voter deface or tear a ballot . . . or wrongly marks the same," "marks" made "mark;" "voter" substituted and punctuation improved.

In its old form, Rule 7 has given rise to some unnecessary confusion, for voters have sometimes thought that the requirement that the mark should be "within a circle" required them to mark a "circle" around their voting mark. The occasional printing of the cross in parentheses, thus (X), has added to the confusion. Accordingly "within a circle" has been changed to "within a party circle" to make it perfectly clear that the party circle printed on the ballot is the "circle" referred to.

**Cross-references.**—Miscellaneous by voters in preparing ballots. Penal Law, § 764 (part 5, post). As to rules for interpreting intent of voter in marking his ballot, see Election Law, § 368, which should be carefully read in connection with this section. Judicial investigation of ballots. Election Law, § 381.

**Forms.**—For illustrations showing how to mark ballots, see Forms (part 12, post).

**History of the use of ballots at elections in this State pursuant to constitutional and statutory authority outlined and discussed, per De Angelis, 1. People ex rel. Karns v. Porter (1917), 176 App. Div. 330, 163 N. Y. Supp. 103.**

The purpose of the Election Law was to secure secrecy to the voter, and to that end it is imperative that he should strictly pursue the method prescribed by the act for his designation of the person for whom he intends to vote. People ex rel. Wells v. Collin (1897), 19 App. Div. 457, 46 N. Y. Supp. 701, aff'd, 154 N. Y. 750.

The right to vote, secured to the citizen by the Constitution, must be exercised in the manner and subject to the regulations lawfully prescribed by the Legislature in respect to the time when and the method by which his will is expressed; and, in order to render his will and intention effectual at the election, he must comply with at least all the substantial requirements of the Law. People ex rel. Sherman v. Person (1892), 64 Hun. 327, 45 N. Y. St. Rep. 526, 19 N. Y. Supp. 297, aff'd, 135 N. Y. 613; People ex rel. Nichols v. Bd. of Canvassers (1892), 129 N. Y. 395, 401.

**Intention of voter.** Although the intention of a voter does not control the validity of his ballot, for it may be void by reason of erasures or other defects irrespective of his intention, yet the court under the authority of the statute may consider within narrow limits the intention of the voter in respect of certain pencil marks on a ballot. Thus the court may say that slight pencil marks on a ballot were made by the voter unintentionally, as when handling the ballot, or by accidental contact with the pencil, and such marks are to be distinguished from marks made intentionally. People ex rel. Karns v. Porter (1917), 176 App. Div. 330, 163 N. Y. Supp. 103.

A voter must show his intent or his ballot cannot be counted. People ex rel. Colne v. Smith (1919), 188 App. Div. 834, 175 N. Y. Supp. 608.

**Voter may vote for any person or make up a new ticket.** The Election Law was not intended to restrict the choice of the people. The voter may vote for any person for any office. He may make up an entire new ticket. People ex rel. Bradley v. Shaw (1892), 64 Hun. 356, 45 N. Y. St. Rep. 537, 19 N. Y. Supp. 302, aff'd, 133 N. Y. 43.

**Voting where name of office omitted by county clerk.** It was held under section 104 (l. 1892, ch. 680), that voters might write on their ballots the name of a person for the office where the law required to be filled at the election, where, by mistake or intention, the clerk omitted from the ballot the name of the office. People ex rel. Goring v. President (1894), 144 N. Y. 616, aff'g 9 Misc. 246, 30 N. Y. Supp. 265. This case seems to be superseded by later amendments.

**Absence of the name of a candidate from an official ballot will not deprive the elector of voting for such candidate.** Montgomery v. O'Dell (1893), 67 Hun. 169, 51 N. Y. St. Rep. 444, 22 N. Y. Supp. 412, aff'd, 142 N. Y. 667.

The legislative intent was to consider a person whose name was thus written as a candidate, although not named as a candidate on the ballot. Matter of Deitz (1914), 87 Misc. 610, 616, 150 N. Y. Supp. 43.

A voter who, with an honest belief that a vacancy in an office exists, writes upon his ballot the title of such office with the name of the person he desires to fill it, will not be deemed to have so marked his ballot as to destroy its validity. Matter of Murphy (1914), 105 App. Div. 308, 151 N. Y. Supp. 267.

**Validity of ballots having pencil dots adjacent to voting circles, irregular**



*crosses, half crosses, excessive crosses and crosses superimposed upon numbers first written.* *Matter of Garvin* (1916), 168 App. Div. 218, 153 N. Y. Supp. 549.

**Mark for identification.**—Under the Election Law as it existed in March, 1916 (and as it now stands), there is no such thing as a ballot marked by the voter for identification. The ballot is valid or void, to be judged by a definite test prescribed by the statute. *People ex rel. Karna v. Porter* (1917), 176 App. Div. 330, 163 N. Y. Supp. 103.

**Marking of ballots by voters.**—A voter of a split ticket must place his cross mark in the "voting space" before the name of his candidate. If he places the mark before the name, but without the "voting space," the ballot is void. *People ex rel. Wells v. Collins* (1897), 19 App. Div. 457, 48 N. Y. Supp. 701, *aff'd* 154 N. Y. 750.

Marks apparently made by the voter in attempting to correct his own errors, as, after making the cross mark in the circle, endeavoring to erase it with a rubber or some sharp instrument or by striking the pencil through the mark, constitute an error or defacement rendering the ballot invalid. *People ex rel. Feeny v. Board of Canvassers* (1898), 156 N. Y. 39, *mod'f'g* 23 App. Div. 201, 48 N. Y. Supp. 866; motion for rehearing denied 156 N. Y. 686.

Ballots having the cross mark placed in the voting space before the words "No nomination" are invalid and cannot be counted. *People ex rel. Feeny v. Board of Canvassers* (1898), 156 N. Y. 39, *mod'f'g* 23 App. Div. 201, 48 N. Y. Supp. 866; motion for rehearing denied 156 N. Y. 686.

Ballots upon which are written with pencil in the blank column names of candidates whose names were already printed upon the ballots for the office are invalid and cannot be counted. *People ex rel. Feeny v. Board of Canvassers* (1898), 156 N. Y. 39, *mod'f'g* 23 App. Div. 201, 48 N. Y. Supp. 866; motion for rehearing denied 156 N. Y. 686.

A ballot bearing a mark made at the head of a ticket as if by a sharp instrument not a pencil is thereby vitiated and cannot be counted. *People ex rel. Feeny v. Board of Canvassers* (1898), 156 N. Y. 39, *mod'f'g* 23 App. Div. 201, 48 N. Y. Supp. 866; motion for rehearing denied 156 N. Y. 686.

When there are two candidates to be elected to an office, a ballot is not vitiated because it contains voting marks opposite the names of two candidates for the office in different columns but in the same horizontal lines. *People ex rel. Feeny v. Board of Canvassers* (1898), 156 N. Y. 39, *mod'f'g* 23 App. Div. 201, 48 N. Y. Supp. 866; motion for rehearing denied 156 N. Y. 686.

If by inspection it is apparent that any part of a line forming the cross mark passed outside the circle the marking is not "only within the circle" and violates the statute. *Matter of Houlihan* (1907), 55 Misc. 5, 106 N. Y. Supp. 205.

Where voters attempt to vote a split ticket, but the cross marks for individual candidates are not within the voting space, the ballots are void. *Matter of Houlihan* (1907), 55 Misc. 5, 106 N. Y. Supp. 205.

An erasure of the name of a candidate printed upon a ballot renders the ballot void. Where a mark somewhat like the letter "S" is made in one of the voting places in the blank column and attempt has been made to erase the mark, the ballot is void. *Matter of Houlihan* (1907), 55 Misc. 5, 106 N. Y. Supp. 205.

Where an elector does not write the name of a person whose name is not printed upon the ballot or for whom he desires to vote in the blank column provided for that purpose, but writes such name in the column headed "Independence League," the ballot is void. *Matter of Houligan* (1907), 55 Misc. 5, 106 N. Y. Supp. 205.

Where a voter makes no mark on the face of the ballot but makes four cross marks on the back, the ballot is void. *Matter of Houligan* (1907), 55 Misc. 5, 106 N. Y. Supp. 205.

Where but one ticket — a Republican — is nominated to be voted for at an annual town meeting and consequently the official ballot contains but two columns, one headed "Republican Ticket" and the other "Blank Column," ballots which have no marks of any kind, either in the circle at the head of the Republican column or in the voting space at the left of the names of the candidates in the Republican column, nor any names written in the blank column, cannot properly be counted in favor of the candidates whose names appear in the column headed "Republican Ticket." *People ex rel. Damon v. Fessenden* (1898), 31 App. Div. 371, 52 N. Y. Supp. 324.

Purple lead cannot be used to make a cross mark. *People ex rel. Obert v. Bourke* (1900), 30 Misc. 461, 63 N. Y. Supp. 906.

Various ballots examined by the court, and held:

That a cross made with double lines in the voting space did not invalidate the ballot;

(The parties conceded that imperfections due to the penetration of the ballot by pencils used over a rough surface did not invalidate the ballot.)

That pencil marks which were clearly of accidental origin did not invalidate the ballot,

That a ballot with a single line instead of a cross in the voting space was void.

That marks in the voting space in addition to the cross mark rendered the ballot void.

That a figure made of many lines, but not constituting a cross, rendered the ballot void,

That where there were several lines in the voting space which were not cross marks, the ballot was void;

That a ballot with an irregular figure, not a cross, in the voting space, was void;

That a ballot with a detached line in the voting space was void. *People ex rel. Karua v. Porter* (1917), 173 App. Div. 330, 163 N. Y. Supp. 103.

A ballot is not invalidated by the fact that it has written on it in the blank column for town clerk under the name of "John Reiley," although the printed name of the Democratic candidate for that office is "John Reilly," as the court will not presume that these persons are identical. *People ex rel. Obert v. Bourke* (1900), 30 Misc. 461, 63 N. Y. Supp. 906.

A ballot must be rejected where a cross mark thereon has been erased by a dirty rubber or a wet finger. *People ex rel. Obert v. Bourke* (1900), 30 Misc. 461, 63 N. Y. Supp. 906.

A ballot must be rejected where it has a cross mark in the circle of one party and a single short line in that of another, as the latter is a mark other than

the voting mark. *People ex rel. Obert v. Bourke* (1900), 30 Misc. 461, 63 N. Y. Supp. 906.

A ballot is not invalidated by the fact that it has, in the party circle, several marks which cross each other at various angles. *People ex rel. Obert v. Bourke* (1900), 30 Misc. 461, 63 N. Y. Supp. 906.

A ballot should be counted where the cross mark placed in the circle at the head of a party ticket is not perfect and is something more than a cross mark. *People ex rel. Bantell v. Morgan* (1897), 20 App. Div. 48, 46 N. Y. Supp. 898.

A ballot cannot be counted where the elector has not placed a cross mark in the voting space at the left of the name of a candidate, but has placed, in the column which is provided for the use of electors who wish to vote for persons not formally nominated, a cross mark in the voting space at the left of the blank headed "For Trustee," no name being written under the latter words. *People ex rel. Bantell v. Morgan* (1897), 20 App. Div. 48, 46 N. Y. Supp. 898.

A ballot is not necessarily invalid because the marks constituting the cross are not exactly straight, even or regular, unless there is a manifest intention to evade or violate the law. It is only where an attempt to make a distinguishing mark can be inferred that the ballot should be rejected. A ballot is not necessarily invalid because an elector in making a mark retraced the stroke of his pencil, thereby making an uneven or double line. *Matter of Hearst* (1905), 48 Misc. 453, 96 N. Y. Supp. 119, mod'd 110 App. Div. 346, 96 N. Y. Supp. 341, rev'd 183 N. Y. 247.

Ballots having, in addition to the cross mark, marks in the voting space, apparently made for identification, those having erasures, in whole or in part, made by rubber or pencil, and a ballot having an inner circle within the voting circle and containing a cross mark partially erased, are void. *People ex rel. Pierce v. Parkhurst* (1898), 24 Misc. 442, 53 N. Y. Supp. 598.

Trifling marks upon a ballot made by a voter by accident do not vitiate it. *People ex rel. Pierce v. Parkhurst* (1898), 24 Misc. 442, 53 N. Y. Supp. 598.

If lines cross each other in the slightest degree, they constitute the statutory cross mark. A cross mark with a third mark crossing it is a sufficient mark. *People ex rel. Pierce v. Parkhurst* (1898), 24 Misc. 442, 53 N. Y. Supp. 598.

A straight Republican ballot, having a proper cross mark in the party circle, is not invalidated by a diagonal straight line in the voting space opposite the name of a Democratic candidate. *People ex rel. Pierce v. Parkhurst* (1898), 24 Misc. 442, 53 N. Y. Supp. 598.

A ballot having a cross mark in both voting spaces opposite the names of rival candidates for the same office, but one not in question, is not wholly void, but it cannot be counted for that office. *People ex rel. Pierce v. Parkhurst* (1898), 24 Misc. 442, 53 N. Y. Supp. 598.

A ballot having two cross marks in the voting space opposite the name of one candidate is valid. *People ex rel. Pierce v. Parkhurst* (1898), 24 Misc. 442, 53 N. Y. Supp. 598.

A ballot having its cross marks partly within and partly without the voting space and so made that the lines, if continued, would cross each other but for the fact that one of them loses its identity by running into the broad

outside ink border of the ballot, is valid. *People ex rel. Pierce v. Parkhurst* (1908), 24 Misc. 442, 53 N. Y. Supp. 356.

A mark made on the lines of an A. crossed by a line nearly horizontal and slanting, partly at least, within the voting space is a sufficient cross mark. *People ex rel. Pierce v. Parkhurst* (1908), 24 Misc. 442, 53 N. Y. Supp. 356.

A ballot having a cross mark wholly within the voting space and wholly within the space occupied by the name of a Democratic candidate must be rejected for a Republican candidate. *People ex rel. Pierce v. Parkhurst* (1908), 24 Misc. 442, 53 N. Y. Supp. 356.

In writing a name in the blank column on a ballot a cross mark should not be used before that name. *Rept. of Atty. Gen. (1907)* 333.

As to marking of ballots by voters, see also, cases cited in note to Election Law, section 308.

Ballots marked in more than one voting space before the name of a candidate for a given office who has been nominated by more than one party, are not valid. *Rept. of Atty. Gen. (1914)*, vol. 2, p. 370.

Ballots are void where erasures appear upon the face thereof. Where a voter places the figure 2 in the voting square before the name of a candidate numbered 20 and then superimposes a cross mark upon it, the ballot is void. A ballot which contains an extra cross mark outside of the voting square and not in front of the name of any candidate is void. A ballot containing the figure 4 in the voting space so numbered and a cross mark superimposed thereon and also containing a little line or involuntary mark in another voting space is void. A ballot containing an ink mark on the border thereof which might have been placed there in the process of counting and canvassing should not be declared void where it does not appear that the voter himself placed said mark upon the ballot. A ballot containing a solid black diamond mark in the voting space is void. A ballot having a curved horizontal mark in the voting square in front of the name of the candidate is void. A half cross in a voting square invalidates a ballot. A short line in one voting space, probably the remnant of a cross mark, invalidates the ballot although the voter made a proper mark in another space.

A ballot having a smudge opposite a voting space, which may be interpreted to be a thumb mark, the cross mark in front of the candidate's name being left firm and clear, and the smudge being to the left of said mark and not interfering with it, is not void. *Matter of Stein* (1917), 179 App. Div. 618, 167 N. Y. Supp. 72.

Erasures, pencil marks other than proper cross marks, incomplete cross marks and unauthorized pencil markings, tears and holes evidently made by a voter writing the word "Republican" on the ballot, voting for candidates of any party, writing in name of candidate with ink instead of pencil with the pencil making cross mark with ink, were held to render the ballots void. *People ex rel. Colne v. Smith* (1919), 188 App. Div. 831, 176 N. Y. Supp. 608.

Voting more than once for the same candidate by making a cross mark in the voting space opposite his name in different columns, or making a heavy cross consisting of more than one line crossing another and with flourishes or separated at the end, evidently made by the voter in running the pencil back and forth or making an X in the marked out space not repeating an X where the name of the candidate is written in, or a cross of double lines or a diamond or several dots or pencil lines, writing part of a name of a candidate whose name is not printed in the space for writing in a name, or a smudge or ink mark on the border which might have been made by the inspectors does not invalidate the ballot. *People ex rel. Colne v. Smith* (1919), 188 App. Div. 831, 176 N. Y. Supp. 608.

There is no presumption that a ballot was torn by a voter. *People ex rel. Colne v. Smith* (1919), 188 App. Div. 831, 176 N. Y. Supp. 608.

In determining whether a cross mark complies with the law and whether slight holes or dots were accidentally made, all circumstances must be made for in favor of the voter as to eye sight or physically. *People ex rel. Colne v. Smith* (1919), 188 App. Div. 831, 176 N. Y. Supp. 608.

Any erasure on a ballot manifestly made by a voter, or failure to cross the line of the cross mark within the voting space, or making a cross mark on the ballot other than that in the voting space, or using any instrument other than a pencil with the X laid in marking the ballot, or making a semi-circular mark over and detached from the cross mark, or making a half of a cross mark, or making a smudge in the voting space or an incomplete cross mark or a single line in the voting space instead of a cross mark, or any mark other than a cross mark in the voting space or a figure consisting of many lines but not constituting a cross mark renders the entire ballot void. *People ex rel. Colne v. Smith* (1919), 188 App. Div. 831, 176 N. Y. Supp. 608.

Where a soldier ballot marked "Dr. Brush" had not been protested and its inspectors of election had credited the vote to Edward F. Brush, the law and intention of the voter was clearly apparent a writ of mandamus will not lie to compel the inspectors of election to correct their return. *People ex rel. Fiske v. Anderson* (1918), 181 App. Div. 706, 168 N. Y. Supp. 879, aff'd 222 N. Y. 678.

Under § 514 the inspectors' finding that soldiers intended to vote for Edward F. Brush should be controlling although the ballots were marked "Dr. Brush," "Brush," and "Mr. Brush." *People ex rel. Fiske v. Anderson* (1918), 181 App. Div. 716, 168 N. Y. Supp. 840, aff'd 222 N. Y. 678, 685, 692.

Where a ballot was marked with the word "Fiske" and the inspectors

failed to find the voter's intent to be for the relator Edwin W. Fiske and there was no protest in regard to said ballot, the court, on application for a writ of mandamus to correct the return, has no authority to count said vote for the relator. *Peo. ex rel. Schum* (1918), 181 App. Div. 717, 168 N. Y. Supp. 967, *aff'd* 222 N. Y. —.

**Soldiers' votes, application to.**—*People ex rel. Fiske* (1917), 102 Misc. 136, 168 N. Y. Supp. 398. *People ex rel. Brush v. Schum* (1917), 102 Misc. 143, 168 N. Y. Supp. 391.

Where the proper cross mark has not been placed before the name of the candidate the ballot is void. *People ex rel. Brown v. Bd. of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

A ballot containing a second cross near the name of a candidate which was not made by the voter, but caused by the heavy ink and incidental to the folding of the ballot, is not invalid. *People ex rel. Brown v. Bd. of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

A cross in the space before the name of a candidate written in, which space has been "blacked out" because not required by statute, does not invalidate the ballot; it is simply an attempt on the part of the voter to indicate his choice. *People ex rel. Brown v. Bd. of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205, modified 216 N. Y. 732.

Where the voting cross is placed in the space occupied by the emblem, the ballot is void. *People ex rel. Brown v. Bd. of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

Ballots not containing cross marks, but defective and incomplete marks that may serve for identification, are void. *People ex rel. Brown v. Bd. of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

A ballot having a semi-circular mark over the cross, but not a part thereof, is void. *Matter of Brown v. Bd. of Canvassers, Queens Co.*, 170 App. Div. 476, 155 N. Y. Supp. 979; modified 216 N. Y. 732.

A ballot having two crosses in the same voting space, or one cross with an attempted erasure of the other, is void. *Matter of Brown v. Bd. of Canvassers, Queens Co.*, 170 App. Div. 476, 155 N. Y. Supp. 979; modified 216 N. Y. 732.

Flourishes at the upper end of both lines of the cross not constituting distinct lines, but made with the same impression of the pencil, constitute an irregular cross, and do not render the ballot void. *Matter of Brown v. Bd. of Canvassers, Queens Co.*, 170 App. Div. 476, 155 N. Y. Supp. 979; modified 216 N. Y. 732.

Erasures may render a ballot void. *People ex rel. Brown v. Bd. of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205, modified 216 N. Y. 732.

Writing the name of a candidate in the space underneath the printed name of a candidate for the office, instead of in the blank space provided for such purpose, renders the ballot void. *People ex rel. Brown v. Bd. of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732. *Matter of Brown v. Bd. of Canvassers, Queens Co.*, 170 App. Div. 476, 155 N. Y. Supp. 979; modified 216 N. Y. 732.



**Invalid vote for one officer not invalidating entire ballot.**—An entire ballot is not invalidated by the fact that the voter placed a cross in front of the name of a candidate for town clerk, and then wrote in the name of an officer for the same office, but is invalid only as to the vote for town clerk. *Matter of Rowe* (1920), 192 App. Div. 4, 182 N. Y. Supp. 216.

**The putting of the ballot in the sealed envelope for the enrollment blank, is an act extrinsic to the ballot which will have the effect to identify it.** *People ex rel. Brown v. Keller* (1915), 170 App. Div. 324, 156 N. Y. Supp. 276; *aff'd* 216 N. Y. 741.

**Marking ballots for constitutional delegates.**—Subd. 3 of this section controls in respect to the manner of marking the ballot for delegates to the constitutional convention, and if the ballot contains a cross mark in the space above a party column and also a cross mark in one or more voting squares at the left of the names of one or more delegates, or the voter writes in a name or names, the ballot should be counted for all the electors in the party group except those whose names are opposite to the names so specially indicated. *Rept. of Atty.-Gen.* (1914), Vol. 2, p. 371.

### 359. Manner of voting.

When the ballot or ballots which a voter has received shall be prepared as provided in the preceding section, he shall leave the voting booth with his ballot folded so as to conceal the fact of the ballot, but show the indorsement and fac-simile of the signature of the official on the back thereof, and, keeping the same so folded, shall proceed at once to the inspector in charge of the ballot box, and shall offer the same to such inspector. Such inspector shall announce the name of the voter and the printed number on the stub of the official ballot so delivered to him in a loud and distinct tone of voice. If such voter be entitled then and there to vote, and be not challenged, or if challenged and the challenge be decided in his favor and if his ballot or ballots are properly folded, and have no mark or tear visible on the outside thereof, except the printed number on the stub and the printed indorsement on the back, and if such printed number is the same as that entered on the poll-books as the number on the stub or stubs of the official ballot or set of ballots last delivered to him by the ballot clerks, such inspector shall receive such ballot or ballots, and after removing the stub or stubs therefrom in plain view of the voter, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot box for the reception of voted ballots, and the stubs in the box for detached ballot stubs. Upon voting, the voter shall forthwith pass outside the guard-rail unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting.

No ballot without the official indorsement shall be allowed to be deposited in the ballot box except as provided by sections three



hundred and forty-five and three hundred and sixty of this chapter, and none but ballots provided in accordance with the provisions of this chapter shall be counted. No official ballot folded shall be unfolded outside the voting booth. No person to whom any official ballot shall be delivered shall leave the space within the guard-rail until after he shall have delivered back all such ballots received by him either to the inspectors or to the ballot clerks, and a violation of this provision is a misdemeanor.

When a person shall have received an official ballot from the ballot clerk or inspectors, as hereinbefore provided, he shall be deemed to have commenced the act of voting, and if, after receiving such official ballot, he shall leave the space inclosed by the guard-rail before the deposit of his ballot in the ballot box, as hereinbefore provided, he shall not be entitled to pass again within the guard-rail for the purpose of voting, or to receive any further ballots.

Derivation: Election Law, § 106.

Cross-references. Showing ballot so as to reveal its contents. Penal Law, § 764 (part 5, post). Person other than inspector receiving ballot. Penal Law, § 764 (part 5, post). Failure to return unvoted ballots. Penal Law, § 764 (part 5, post). Illegal voting generally. Penal Law, §§ 764, 765 (part 5, post).

An elector must vote all the ballots that he wishes and is able to vote at one time—He cannot present himself more than once at the polls for the purpose of voting, and when he is reached in his turn he must once and for all exercise his right of suffrage at that election. *Simpson v. Brown*, (1888) 18 N. Y. St. Rep. 781, 2 N. Y. Supp. 571.

What ballots counted.—The requirement that "none but ballots provided in accordance with the provisions of the Election Law shall be counted" is to prevent the use of any other than official ballots, except only in the cases provided for in sections 89 and 107 (now §§ 345 and 360), and not to condemn as invalid official ballots which have been furnished to the electors by public officers charged with that duty for some oversight or error on their part. *People ex rel Williams v. Board of Canvassers*, (1905) 105 App. Div. 197, 94 N. Y. Supp. 996 aff'd 183 N. Y. 538.

Ballots placed within the envelope for the enrollment blank, the envelope being sealed, are void upon the ground that they were never voted. *People ex rel Brown v. Keller* (1915), 170 App. Div. 324, 155 N. Y. Supp. 976, aff'd 216 N. Y. 741.

Unofficial ballots at village election.—The inspectors of an election at a village election cannot issue a poll or count unofficial ballots. If they do so marshals will issue to compel them to reconvene, return the unofficial ballots, correct the statement of the results of the canvass and make a proper certificate of the result. *People ex rel March v. Beam*, (1907) 117 App. Div. 374, 103 N. Y. Supp. 818, mod'd 188 N. Y. 206.

**Voter may complete act of voting.**—A voter who has received his ballots before the closing hour may complete the act of voting. Reports of Atty. Genl., (1897) 221, (1894) 313, (1893) 144. See, also, case cited in note to Election Law, § 291.

### § 360. When unofficial ballots may be voted.

If, for any cause, the official ballots shall not be provided as required by law at any polling place, upon the opening of the polls of an election thereat, or if the supply of official ballots shall be exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as practicable in the form of the official ballot, may be used.

Derivation: Election Law, § 107.

Cross-references.—As to provisions for unofficial ballots, see Election Law, § 345.

### § 361. Challenges.

A person may be challenged either when he applies to the ballot clerk for official ballots, or when he offers to an inspector the ballot he intends to vote, or previously by notice to that effect to an inspector by any elector. It shall be the duty of each inspector to challenge every person offering to vote whom he shall know or suspect not to be duly qualified as an elector, and every person whose right to register as an elector was challenged at the time of registration, provided such challenge has not previously been withdrawn. In addition to the foregoing any person may be challenged by any duly appointed watcher or challenger either when he applies to the ballot clerk for official ballots or when he offers to an inspector the ballot he intends to vote or previously by notice to that effect to an inspector.

Whenever a person shall apply to the board of inspectors on election day to vote upon the name of a person whose right to register as an elector was challenged, it shall be the duty of the chairman of the board of inspectors or some member of such board to administer to such applicant the preliminary oath prescribed in the next section, and to read to such applicant each question upon the copy of the challenge affidavit signed at the time of registration by the person upon whose name the applicant desires to vote, and the inspectors and watchers shall compare the answers given to such questions with the answers re-

recorded thereto upon the copy of said challenge affidavit, and shall carefully compare the description of the person challenged at the time of registration recorded upon the copy of the challenge affidavit with that of the applicant. If there shall be any material difference or conflict between the answers given by the applicant and the answers recorded upon the copy of the challenge affidavit to the questions printed thereon, or in the description of the person challenged and the applicant, or if the applicant shall refuse to answer any question put to him, or shall refuse to make such oath, his vote shall not be received and the facts thereof shall be recorded in each such case in the challenge record provided for in section three hundred and sixty-four.

Derivation: Election Law, § 106, pt. of subd. 1, as amended by L. 1901, ch. 544 § 2.

Amended by L. 1910, ch. 428, L. 1911, ch. 619, L. 1916, ch. 537, in effect May 15, 1916.

Voters taking oath entitled to vote. Voters answering the questions and taking the oath presented are entitled to vote. Opinion of Attorney General. Voters must take oath. A person whose right to vote is in dispute or affected may take the oath required by law notwithstanding any oath he may have taken to procure the registration of his name. Opinion of Attorney General.

Inspectors of election cannot refuse vote of qualified voter, though his name has already been ~~added~~ on and mandamus lies to compel reception of vote. His vote may be challenged and the general oath must then be taken before receiving his vote. People ex rel Borgia v Doe, (1906) 189 App Div 69, 86 N Y Supp 102.

Inspectors of election have no right to refuse to allow a duly qualified and registered voter to vote, solely because some other person has previously voted in his name. People ex rel Borgia v Doe, (1906) 189 App Div 69, 86 N Y Supp 102.

One who offers his vote is legally presumed to be entitled to vote until some facts appear which would raise a contrary presumption. But where it appears by prima facie evidence that a person has not been naturalized the burden of proving his citizenship is upon the voter. People v Pease, (1903) 17 N Y 41.

A deserter from the U. S. military service who has taken the preliminary oath upon being challenged cannot be deprived of his vote unless a duly authenticated record of his conviction of the offense is presented to the board. Goetheus v Matthewson, (1910) 41 N Y 420. See, also Report of Atty Genl. 1910, 74.

Inspectors of election act only ministerially in receiving the vote of electors, and cannot refuse to accept a vote of an elector who takes the required oaths. People v Pease, (1903) 17 N Y 41. Goetheus v Matthewson, (1910) 41 N Y 420. People ex rel Stapleton v Bell, (1909) 119 N Y 177. People ex rel Sherwood v Board of Canvassers, (1911) 125 N Y 277. Matter of Hamilton, (1904) 8 Hun, 511, 31 N Y Supp 60. People ex rel Borgia v Doe, (1906) 189 App Div 69, 86 N Y Supp 102. People v Hochstim, (1911) 36 Misc 621, 71 N Y Supp 634, rev'd 78 App Div 25, 78 N Y Supp 634.

The decision by a majority of the board of inspectors in his favor is not essential to the reception of the vote of a challenged voter. People ex rel Stapleton v Bell, (1909) 119 N Y 177.

Election officers are liable in damages for asking questions not tending to test the qualifications to vote of a challenged voter and for rejecting his vote upon his refusal to answer such questions. Goetheus v Matthewson, (1910) 41 N Y 420.

Mandamus is proper to compel inspectors to take the vote of a challenged elector who has answered the proper questions and taken the required oaths. But mandamus will not be granted if it appears indisputably upon the application that the elector is not a qualified voter. People v Pease, (1903) 17 N Y 41. Goetheus v Matthewson, (1910) 41 N Y 420. People ex rel Stapleton v Bell, (1909) 119 N Y 177. People ex rel Sherwood v Board of Canvassers, (1911) 125 N Y 277. People ex rel Borgia v Doe, (1906) 189 App Div 69, 86 N Y Supp 102.

The case of People ex rel Lower v Donovan, (1908) 41 Hun, 511, 18 N Y Supp 107, holding that a mandamus issued upon election day compelling inspectors to accept a vote is void elsewhere than in the first judicial district,

can be no longer applicable as the statute forbidding courts to sit upon election day has been repealed.

### § 362. Preliminary oath.

If any person other than those persons heretofore provided for offering to vote at any election shall be challenged in relation to the right to vote thereat, one of the inspectors shall tender to him the following preliminary oath: "You do swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualifications as an elector."

The inspectors or one of them shall then question the person challenged in relation to his name; his place of residence before he came into that election district; his then place of residence; his citizenship; whether he be a native or naturalized citizen, and if the latter, when, where, and in what court, or before what officer he was naturalized; whether he came into the election district for the purpose of voting at that election; how long he contemplates residing in the election district; and all other matters which may tend to test his qualifications as a resident of the election district, his citizenship, or his right to vote at such election at such polling place and in addition to the foregoing provisions, the inspectors or one of them shall ask the person challenged the same questions that were asked of him when he registered. A challenge made by any elector or by any duly appointed watcher or challenger must be acted upon by the board of inspectors as provided in this section. If any person shall refuse to take such preliminary oath when so tendered, or to answer fully any such question which may be put to him, his vote shall be rejected. After receiving the answers of the person so challenged, the board of inspectors shall point out to him the qualifications, if any, in respect to which he shall appear to them deficient.

DERIVATION. Election Law § 398, et. seq. of subd. 1, as amended by L. 1901, ch. 344, § 2 AND SPPD. by L. 1902, ch. 48, § 1, 1911, ch. 449. In effect July 1st, 1911.  
FOR MR. QUESTIONS under preliminary oath. See Forms (part II, post).

### § 363. General oath and additional oaths.

If the person so offering to vote shall persist in his claim to vote, and the challenge be not withdrawn, one of the inspectors shall then administer to him the following general oath:

"You do swear (or affirm) that you are twenty-one years of age; that you have been a citizen of the United States for ninety days, and an inhabitant of this state for one year next preceding this election, and for the last four months a resident of this county, and for the last thirty days a resident of this election district; and that you have not voted at this election."

If the person so offering to vote shall be challenged for causes stated in section two of article two of the constitution of this state, the following additional oath shall be administered by one of the inspectors:

"You do swear (or affirm) that you have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid, or used, any money or other valuable thing, as a compensation or reward for the giving or withholding of a vote at this election and have not made any promise to influence the giving or withholding of

any such vote, and that you have not made, or become directly or indirectly interested in any bet or wager depending upon the result of this election."

If the person so offering to vote shall be challenged on the ground of having been convicted of bribery or any infamous crime, the following additional oath shall be administered to him by one of the inspectors.

"You do swear (or affirm) that you have not been convicted of bribery or any infamous crime or if so convicted, that you have been pardoned and restored to all the rights of a citizen."

If any person shall refuse to take either oath so tendered his vote shall be rejected, but if he shall take the oath or oaths tendered him, his vote shall be accepted.

Derivation: Election Law, § 108, subd. 2.

#### § 364. Record of persons challenged.

1 The inspectors of election shall keep a minute of their proceedings in respect to the challenging and administering oaths to persons offering to vote, in which shall be entered by one of them the name of every person who shall be challenged or take either of such oaths, specifying in each case whether the preliminary oath or the general oath, or both, were taken. At the close of the election, the inspectors shall add to such minutes a certificate to the effect that the same are all such minutes as to all persons challenged at such election in such district.

2 In cities and villages having a population of five thousand or more, in addition to the foregoing record, the chairman of each board of inspectors shall, immediately after any election or primary, return to every public officer who has filed with him or a member of his board a list of voters to be challenged, such challenge list with a written statement opposite each name, giving the reason if the name was voted on why the board permitted any person to vote thereon or, if some person applied to vote thereon and was challenged and did not vote the words "challenged and did not vote," or if no person applied to vote on such name the words "no application." Before making such return such chairman shall sign his name at the foot of each page of such challenge list.

Derivation: Election Law, § 108, subd. 3.

Amended by L. 1915, ch. 678, L. 1916 ch. 537, in effect May 15, 1916.

#### § 365. Time allowed employees to vote.

Any person entitled to vote at an election held within this state, shall on the day of such election be entitled to absent himself from any service or employment in which he is then engaged or employed, for a period of two hours, while the polls of such election are open. If such voter shall notify his employer before the day of such election of such intended absence, and if thereupon two successive hours for such absence shall be designated by the employer, and such absence shall be during such designated hours, or if the employer upon the day of such notice makes no designation, and such absence shall be during any two consecutive hours while such polls are open, no deduction shall be made from the usual salary or wages of such voter, and no other penalty shall be imposed upon him by his employer by reason of such absence. This section shall be deemed to include all employees of municipalities.

Derivation: Election Law, § 109.

Amended by L. 1918, ch. 32, in effect Mar. 4, 1918.



Cross-references.—Refusal to permit employees to attend. Penal Law, § 759 (part 5, post). Intimidation of employees. Penal Law, § 772 (part 5, post).

### § 366. Canvass of votes; preparation for canvass.

1. *Place and time of canvass.* As soon as the polls of an election are closed, the inspectors of election thereat shall publicly canvass and ascertain the votes, and not adjourn or postpone the canvass until it shall be fully completed.

The room in which such canvass is made shall be clearly lighted, and such canvass shall be made in plain view of the public. It shall not be lawful for any person or persons, during the canvass, to close or cause to be closed the main entrance to the room in which such canvass is conducted in such manner as to prevent ingress or egress thereby.

2. *Ballot clerks.* At the close of the polls the ballot clerks shall make up in triplicate in ink a return which shall account for all the official ballots furnished to the election district in which they are serving; they shall count and verify the number of each kind of unused ballots, and enter it upon their returns; they shall then open the box for ballots canceled before delivery and spoiled and returned by voters, separate them into their several kinds, count all ballots of each kind and enter the numbers upon their returns. They shall make the additions and subtractions called for by the returns and prove their figures. In making their returns as aforesaid, the ballot clerks shall use the printed forms supplied to them with the ballots, and they shall carefully insert in all the blank spaces thereon the appropriate names, words and figures according to the directions contained in article nine of this chapter and printed on the forms.

Each kind of ballot and each kind of stub shall immediately after they are counted as aforesaid be securely tied in a separate package, and shall be plainly labeled, sealed, and returned to the box from which it was taken, and the box securely locked and sealed. The ballot clerks shall also securely tie all unused ballots in a sealed package. They shall then sign and swear to their returns before one of the inspectors and shall deliver their returns, the boxes, packages, ballots and stubs, together with the keys of the boxes, to the chairman of the board of inspectors. The ballots so sealed and delivered shall be deposited and preserved as ballot boxes are hereinafter required to be deposited and preserved.



*B. Poll clerks.* Immediately upon the close of the polls the poll clerks shall assist the inspectors of election in comparing the poll books or comparing such books with the registers, as the case may be, as hereinafter provided, and shall make out in triplicate in ink and sign and swear to their returns before one of the inspectors of elections according to the forms provided, and deliver them to the chairman.

*4. Order of canvassing.* The ballot boxes shall then, and not before, be opened and the ballots shall be canvassed, in the following order:

First. The box, if any, containing presidential ballots.

Second. The box, if any, containing general ballots; and

Third. The boxes, if any, containing ballots upon constitutional amendments or other questions submitted, including town questions.

*Derivation:* Election Law, § 110, pt. of subd. 1, as amended by L. 1898, ch. 335, § 7.

*Amended by* L. 1913, ch. 821; L. 1919, ch. 504, in effect Oct. 1, 1919.

*Consolidators' note.*—The body of the subdivision is here divided into sections 366 and 367, but the last sentence, providing that the chairman only shall unfold ballots, has been put into section 369 with other provisions governing the canvass of the ballots.

A tally sheet is an essential part of the canvass. *Matter of Stewart* (1897), 24 App. Div. 201, 48 N. Y. Supp. 937, *aff'd* 155 N. Y. 545.

### § 366-a. Special provision as to preparation for canvass in a city of over one million inhabitants.

In a city of over one million inhabitants, at the close of the polls, the ballot clerks shall immediately make and verify the ballot clerks' return and perform the other duties prescribed by subdivision two of section three hundred and sixty-six. In such city, the comparison of the poll books with the registers, provided for in section three hundred and sixty-seven, shall be made by the inspectors and poll clerks who attended during the taking of the vote, and they shall remain after the close of the polls for that purpose. Such inspectors and poll clerks shall subscribe and deliver to the canvassing inspectors a certificate, in triplicate, on a form to be provided by the board of elections, of the total number of persons who voted at the polling place as appears from the poll books and registers after correcting mistakes, if any, therein. Upon the completion of the foregoing duties, and the organization of the canvassing inspectors by the selection of a chairman and designa-

tion of poll clerks from their number, the inspectors, poll clerks and ballot clerks who attended at the taking of the vote shall retire: and thereupon the canvassing inspectors shall have charge of all ballots, ballot boxes, with their keys, stubs, packages, books, records, forms, returns and other election paraphernalia in the polling place. Such canvassing inspectors, and the poll clerks so designated, shall then have the powers and duties of the board of inspectors and poll clerks, respectively, in the count and return of the vote and the performance of any power or duty devolved upon the board of inspectors or poll clerks by this article after the comparison of the poll books with the registers. The chairman of such canvassing inspectors, chosen as provided in section three hundred and fourteen, shall be the chairman of such board of inspectors. The certificate as to the number of voters who voted at the polling place, made by the retiring inspectors and poll clerks, shall be annexed to the ballot clerks' returns before the filing thereof as provided by law.

The returns of canvass shall be subscribed and verified and the tally sheets subscribed and certified by the inspectors who canvass the vote. The words "acting as poll clerk" shall be added to the subscription of each inspector so acting, instead of requiring his signature in each separate capacity; and the forms provided in sections three hundred and thirty-five, three hundred and thirty-seven and three hundred and thirty-eight, so far as they relate to the subscription thereof, shall be so altered and printed as to provide for a compliance with the foregoing provisions. In such city, three of the canvassing inspectors may swear to the returns of canvass before the chairman, and the chairman before any of such inspectors. The ballot clerk's return may be sworn to before any election officer of the election district.

Added by L. 1918, ch. 323 in effect Apr. 24, 1918.

### § 367. Comparing poll-books and registers; verifying number of ballots.

The board of inspectors shall commence the canvass by comparing the two poll-books, and where the poll-books are separate from the register by comparing the poll-books with the registers used on election day as to the number of voters voting at the election, correcting any mistakes therein, and, after the ballot

clerks have delivered their returns to the chairman of the board, and not before, by counting the ballots found in the ballot boxes without unfolding them, except so far as to ascertain that each ballot is single, and by comparing the number of ballots found in each box with the number shown by the poll books and the ballot clerks' returns to have been deposited therein.

If the ballots found in any box shall be more than the number of ballots so shown to have been deposited therein, such ballots shall all be replaced, without being unfolded, in the box from which they were taken, and shall be thoroughly mingled therein, and one of the inspectors designated by the board shall without seeing the same and with his back to the box, publicly draw out as many ballots as shall be equal to such excess and, without unfolding them, forthwith inclose them in an envelope which he shall then and there seal and indorse "excess ballots from the box for ballots for (presidential electors, or general officers, et cetera, as the case may be)," signing his name thereto, and such envelope with the excess ballots therein shall be placed in the box for defective or spoiled ballots.

If two or more ballots shall be found in the ballot box so folded together as to present the appearance of a single ballot, and if the whole number of ballots in such ballot box exceeds the whole number of ballots shown by the poll books and ballot clerks' returns to have been deposited therein, and not otherwise, they, or enough of them to reduce the ballots to the proper number, as action to be made without examination of any voting mark thereon, shall similarly be inclosed, sealed, indorsed and placed with the spoiled ballots.

If, however, there lawfully be more than one ballot box for the reception of ballots voted at the polling place, no ballot found in the wrong ballot box shall for that reason be rejected, but shall be placed in its proper box by the inspectors upon the count of the ballots before the canvass, and counted in the same manner as if found in the proper ballot box, if such ballot shall not, together with the ballots found in the proper ballot box, make a total of more ballots than are shown by the poll books and ballot clerks' returns to have been deposited in the proper box.

No ballot that has not the official indorsement shall be counted, except such as are voted in accordance with the provisions of this chapter relating to unofficial ballots.

Derivation: Election Law, § 110, pt. of subd. 1, as amended by L. 1898, c. 325 § 7.

Amended by L. 1913, ch. 821; L. 1919, ch. 504, in effect Oct. 1, 1919.

The indorsement upon the official ballot is an essential part of the machinery of elections, by means of which the secrecy of voting is to be secured and enforced. Where ballots were cast containing an incorrect indorsement they were rejected lawfully. *People ex rel. Nichols v. Board of Canvassers*, (1922) 129 N. Y. 401.

(It should be noted, however, that the ballots referred to in the above case were prepared under what was known as the Ballot Reform Law, which provided that each political party should have a separate ballot for its own use, and, therefore, if the indorsement upon the back of one set of ballots was different from the indorsement upon the others, the ballot would reveal, when voted, how, or for whom, the elector cast his ballot. In the present law where there is but one ballot for all parties, is the indorsement necessarily of so great importance?)

A proper and legal endorsement is one of the essential features of an official ballot, and a ballot not legally endorsed cannot be received or counted. People ex rel. Sherman v. Person, (1892) 64 Hun 327, 45 N. Y. St. Rep. 528, 19 N. Y. Supp. 297, aff'd 135 N. Y. 613.

### § 368. Method of canvassing.

1. *Method of canvassing ballots generally.* Except as hereinafter specially provided, the method of canvassing ballots shall be as follows:

The chairman of the board of inspectors shall personally unfold each ballot of the kind then to be canvassed in such a manner that its face shall be down and all marks thereon shall be wholly concealed, and he shall place all the ballots, so unfolded and with their faces down, in one pile. He shall then take up each ballot in order, turn it face up, and announce in a loud and distinct voice, the vote registered on the first section or that the ballot is void or that the section is blank, as the case may be. He shall then turn the ballot face down and place it in a new pile. When he has announced the votes on the first sections of all the ballots of the kind then to be canvassed, and the poll clerk's tallies made as hereinafter provided are proved to be correct, the official return provided for in article thirteen shall be filled out and signed. Then, and not before, the chairman shall proceed to canvass in like manner the votes upon the sections remaining to be canvassed, completing the canvass of each ballot as he proceeds, and thus he shall proceed until all the ballots have been canvassed.

As each vote is announced each poll clerk shall immediately tally it in black ink, with a downward stroke from right to left upon the official tally sheet provided for the purpose, also carefully tallying one for each blank or void vote. Each poll clerk as he tallies a vote shall clearly announce the name of the candidate for whom he tallies it, or that he tallies the vote blank or void as the case may be, or in case of a question submitted that he tallies the vote "Yes" or "No" as the case may be, and until such announcement by each poll clerk the chairman shall not announce another vote. When a candidate's name is not printed on the official tally sheet or return provided, it shall be written in full thereon in ink in its due order, that is, in the order in which it appears on the ballot. The tally marks shall be made in due numerical order in the tally spaces provided.

When all the sections relating to the same office or question shall have been canvassed, the number of ballots shall be compared with the tally thereof. If the result as shown on the tally sheets does not agree with the results as shown by the number of ballots, an error has been committed and a recanvass must be made. Upon the recanvass, the tally must be kept in red ink, from left to right across the previous tally marks. When all the errors have been corrected and the tally sheets have been found to be correct, the poll clerks shall indicate the last tally opposite each name by forthwith canceling at least the next ten unused tally spaces, if there are so many, and if there are not so many, then as many as possible, by drawing through them in red ink one or more horizontal straight lines. The tally sheets having been thus prepared, verified, and closed, the inspectors and poll clerks shall sign the certificate at the foot of each sheet in the places indicated thereon.

2. *Canvassing ballots when more than one candidate is to be elected to the same office.* When more than one candidate is to be elected to the same office, the foregoing method of canvass shall be modified to meet the necessities of the case as follows:

The chairman shall read the names of the candidates voted for in the order in which they appear in the section, and each poll clerk shall make an accurate tally of each vote as announced upon the official tally sheet provided for the purpose. The chairman shall also announce the void ballots, if any, and

the number of blanks, if any, upon the section, and each poll clerk shall make as many tallies for each void ballot as there are candidates thereon to be elected to the office in question, and one tally for each blank.

3 *Canvassing presidential ballots.* The straight ballots, that is, all valid ballots on which all the candidates in any party group are voted for, shall be placed in piles, like with like, and the split ballots, that is, all valid ballots marked in one or more of the individual voting squares or with names written thereon, shall be placed in one pile, and all void ballots and wholly blank ballots shall be likewise placed in separate piles. Each of the piles shall then be counted and the result clearly announced, and the number of straight votes for each candidate shall be entered in gross opposite his name on a tally sheet by each poll clerk, and the number of split, void and wholly blank ballots shall be similarly entered in their appropriate places. The chairman shall then take the split ballots and they shall be canvassed, announced and tallied in the manner above provided for canvassing ballots when more than one candidate is to be elected to the same office.

*Derivation:* Election Law, § 110, subd. 2, as amended by L. 1898, ch. 335, § 7; L. 1901, ch. 654, § 5.

*Amended by* L. 1911, chs. 296 and 640, L. 1913, ch. 821, and L. 1914, ch. 244 in effect Apr. 8, 1914.

*Cross-References.* — See Election Law, §§ 358 and 360 and cases cited in notes thereunder.

*The purpose of the Election Law* was to secure secrecy to the voter, and to that end it is imperative that he should strictly pursue the method prescribed by the act for his designation of the person for whom he intends to vote. *People ex rel Wells v. Collins*, (1897) 19 App. Div. 457, 46 N. Y. Supp. 761, aff'd 154 N. Y. 759.

The very purpose of voting is that the ballot may show the voter's choice, and when he names more than the limited number of candidates to be voted for, it is impossible to determine which of the number he prefers. *People v. Ames*, (1879) 19 How. Pr. 551, *People v. Loomis*, (1832) 8 Wend. 396; *People v. Seaman*, (1848) 5 Den. 409.

*Irregularity and ambiguity in ballot.* — If it is possible to determine the intention of the elector his ballot is to be counted as he intended. *In re Jerome Ballots*, 48 Misc. 441, 96 N. Y. Supp. 122.

These rules have no reference to false or imperfect markings, but have reference only to ballots upon which the markings comply with the statutory requirements, but as to which there is confusion as to the particular candidates for which the voters intended to vote. *Matter of Houlihan*, (1907) 55 Misc. 7, 106 N. Y. Supp. 205.

Ballots whose marks for voting do not substantially comply with the Election Law are void and must be rejected by the inspectors, and no question of the voters intention is involved. *Matter of Houlihan*, (1907) 55 Misc. 6, 106 N. Y. Supp. 205.

*Void ballots* — ballots not conforming to the provisions of a statute intended for the purpose of securing secrecy, and which reveal the contents or render them capable of subsequent identification, are void by force of prohibition in the statute against revealing and counting them. *Commonwealth v. Woolper*, 3 S. & R. 29; *West v. Ross*, 55 Mo. 350; *Ogleby v. Sigman*, 56 Misc. 402; *State v. McKinnon*, 8 Oreg. 493; *Reynolds v. Snow*, 67 Cal. 407; *Talcott v. Philbrick*, 59 Conn. 472; *Fields v. Osborne*, 21 Atl. Rep. 1070; *In re Vote Marks*, id. 992; *Ledbetter v. Hall*, 62 Mo. 422; *Perkins v. Carraway* 59 Misc. 222; *Steele v. Calhoun*, 61 Misc. 556.

*Irregularity and ambiguity of ballot.* — Review by court of marks on ballot as showing intent to evade or violate the law. *Matter of Hearst*, (1906) 48 Misc. 453, 96 N. Y. Supp. 119, mod'd 110 App. Div. 346, 96 N. Y. Supp. 341 which was reversed 183 N. Y. 274.

A ballot marked in the circle at the head of one ticket and also in the circle at the head of the ticket bearing Mr. Jerome's name alone as district attorney nominee, held not a blank ballot as to district attorney, but should be counted for Mr. Jerome. Such marks held not intended as distinguishing marks. *In re "Jerome Ballots"*, (1906) 48 Misc. 441, 96 N. Y. Supp. 122.



**Erasures, cancellations, etc., invalidate ballots.** — Marks apparently made by voter in attempting to correct his errors, such as after making the cross mark in the circle or in the voting space endeavoring to erase them with a rubber or some sharp instrument or in other cases by striking the pencil through the marks so as to erase them, render the ballot invalid and no vote therein can be lawfully counted. *People ex rel. Feeney v. Bd. Canvassers*, (1898), 156 N. Y. 39, 23 App. Div. 201, 48 N. Y. Supp. 866, motion for rehearing denied 156 N. Y. 686.

**Mutilated ballot.** — Where two ballots were discovered to be mutilated by having torn from the bottom thereof stubs containing the names of certain of the candidates, and the stubs so torn off were found deposited among the stubs in the box for detached stubs, the court, assuming that the mutilation was due to the inadvertent act of the inspectors, held that the mutilated ballots should be counted. *Thatcher v. Lent*, (1902), 71 App. Div. 483, 75 N. Y. Supp. 752.

**A ballot furnished by the State is not a marked ballot within the law**, because of any irregularity in making it up or printing it. *People ex rel. Hirsch v. Wood*, (1896), 148 N. Y. 112, 14 Misc. 377.

**Marks in voting place made as if by some sharp instrument, other than a pencil, render ballot void and should not be counted.** *People ex rel. Feeney v. Bd. Canvassers*, (1898), 156 N. Y. 39, mod'g 23 App. Div. 201, 48 N. Y. Supp. 866, motion for rehearing denied 156 N. Y. 686.

**Cross marks in voting space before words "no nomination" are marks other than to be used by elector for voting and render ballot containing such marks void.** *People ex rel. Feeney v. Bd. Canvassers*, (1898), 156 N. Y. 39, mod'g 23 App. Div. 201, 48 N. Y. Supp. 866, motion for rehearing denied 156 N. Y. 686.

**Writing the name of candidate for office already printed in the blank column for the same office vitiates the ballot under the plain language of the statute.** *People ex rel. Feeney v. Bd. Canvassers*, (1898), 156 N. Y. 39, mod'g 23 App. Div. 201, 48 N. Y. Supp. 866, motion for rehearing denied 156 N. Y. 686.

**Where a cross with no name after it is put in the blank column intended for persons not formally nominated, it cannot be accredited to the person whose name is in the next column on the left.** *People ex rel. Boutel v. Morgan*, (1897), 20 App. Div. 48, 46 N. Y. Supp. 898.

**Cross marks in circle.** An elector made a cross mark in each circle at the head of the Democratic, Republican and Socialist Labor party, and also made a cross mark in the voting spaces before the names of candidates on both the Democratic and Republican tickets, but not on the Socialist Labor ticket. It was held that the cross mark in the circle at the head of the Socialist Labor ticket made the ballot void. *Matter of Holmes*, (1899), 30 Misc. 127, 61 N. Y. Supp. 775.

Where there are Democratic, Republican and Socialist Labor tickets at a town election, and the latter party has no candidate for supervisor, a ballot containing cross marks in the circle at the head of both the Democratic and Socialist Labor tickets, and a similar mark in the voting spaces before the name of the Democratic candidate for supervisor must be counted for him. *Matter of Holmes*, (1899), 30 Misc. 127, 61 N. Y. Supp. 775.

An imperfect circle resembling the letter O is not a legal cross mark and renders the ballot void as containing a mark other than the voting mark. *People ex rel. Obertr v. Bourke*, (1900), 30 Misc. 461, 61 N. Y. Supp. 906.

Where the Socialist Labor party has made no nomination for a particular office and the Republican party has nominated a ballot containing cross marks in the circles at the head of both tickets must be counted for the Republican candidate. *People ex rel. Obertr v. Bourke*, (1900), 30 Misc. 461, 61 N. Y. Supp. 906.

Ballots containing cross marks in two or more of the voting spaces at the heads of the tickets should be counted for a candidate named for the same office on all tickets so cross marked. *People ex rel. Feeney v. Board of Canvassers*, (1898), 156 N. Y. 39, mod'g 23 App. Div. 201, 48 N. Y. Supp. 866.



motion for rehearing denied 156 N. Y. 688. *Matter of Fallon* (1909), 135 App. Div. 124, 119 N. Y. Supp. 1061, modified 197 N. Y. 336.

When a voter has placed a cross mark in the circles of two tickets which have candidates for State and county offices, but only one candidate for city offices, the ballot should be counted for the city ticket. *Matter of Houligan* (1907), 55 Misc. 5, 106 N. Y. Supp. 205.

A ballot having crosses in the circle at the head of two party columns but having also a cross in front of the name of a candidate in one of those columns, should be counted as a vote for said candidate. *People ex rel Moran v. Smith* (1908), 123 App. Div. 730, 108 N. Y. Supp. 243.

A ballot marked at the head of two party columns, and not be rejected as marked for identification because there are also crosses in front of the names of two Republican candidates and also a cross in front of the name of one Democrat, who was a candidate for the same office. *People ex rel Moran v. Smith* (1908), 123 App. Div. 730, 108 N. Y. Supp. 243.

A ballot marked with a cross in the circle at the head of a party column and having the cross in front of the name of a candidate in another party column should be counted for the latter candidate. *People ex rel Moran v. Smith* (1908), 123 App. Div. 730, 108 N. Y. Supp. 243.

Where the voter has placed a cross mark in the circles of five different tickets which have a full set of candidates for State and county offices, and two of such tickets have a full set of candidates for city offices, the ballot should be rejected. *Matter of Houligan* (1907), 55 Misc. 5, 106 N. Y. Supp. 205.

A ballot containing in a circle at the head of one column a number of cross or pencil marks, consisting of three perpendicular lines and three or four horizontal lines crossing the perpendicular lines is void under the provisions of this section providing that "a void ballot is a ballot upon which there shall be found any mark other than a single (X) mark made for the purpose of voting," etc. *Francher v. Lent* (1902), 71 App. Div. 483, 75 N. Y. Supp. 732.

An imperfect cross mark in the circle at the head of the party column will not vitiate the vote. *People ex rel Beutel v. Morgan* (1907), 20 App. Div. 49, 10 N. Y. Supp. 898.

In construing sections 358 and 368, such a construction of the word "single" and of the provision "one straight line crossing another straight line" should be adopted that a transverse line drawn by an ink ball-point, or an irregular or curved line drawn by an elector with poor exertion or with muscles untrained to the use of a pencil, or any single line but once crossing another single line in such a way as to substantially comply with the statute, should not be held void. *Matter of Fallon* (1910), 197 N. Y. 336, modified 175 App. Div. 195, 119 N. Y. Supp. 1061.

A ballot which bears pencil marks other than crosses placed in the voting spaces is void and should not be counted. *Matter of Fallon* (1909), 135 App. Div. 125, 119 N. Y. Supp. 1061.

A cross placed only in the circle of voting spaces on a ballot renders it void. *Matter of Fallon* (1909), 135 App. Div. 125, 119 N. Y. Supp. 1061.

Where the name of a candidate appears in two or more columns a vote should be counted for him, although the voter placed a cross in the circle at the head of each of the columns. *Matter of Fallon* (1909), 135 App. Div. 195, 119 N. Y. Supp. 1061.

So, too, a vote should be counted for a candidate although crosses are placed in circles at the head of more than one column if the name of the candidate appeared in the columns marked with the exception of one column where no candidate for that office was named. *Matter of Fallon* (1909), 135 App. Div. 195, 119 N. Y. Supp. 1061.

Quære, as to whether the court is empowered to declare a ballot void on the ground that, although legally marked in the voting spaces, the marks were given unnecessary peculiarities for the purpose of identification. *Matter of Fallon* (1909), 135 App. Div. 195, 119 N. Y. Supp. 1061.

Although a literal reading of the Election Law would seem to confine the court to a determination as to whether protested ballots were marked for identification, the court is not confined to a determination as to whether the protest was well taken upon the ground that the ballot was marked for identification, but may and should determine whether the ballot is valid. *Matter of Fallon* (1909), 135 App. Div. 195, 119 N. Y. Supp. 1061.

In determining whether crosses made by a voter in the voting spaces of a ballot were given certain peculiarities for the purpose of identification, the statute should not be strictly construed. *Matter of Fallon* (1909), 135 App. Div. 195, 119 N. Y. Supp. 1061.

Thus, where there is no extraneous evidence showing that such peculiarities were made for the purpose of identification, a ballot should be counted, although the lines of the cross were wavering and irregular or the pencil was used back and forth several times so that the lines of the cross were double etc. *Matter of Fallon* (1909), 135 App. Div. 195, 119 N. Y. Supp. 1061 mod'fd 197 N. Y. 336.

In writing a name in the blank column on a ballot a cross mark should not be used before that name. *Rept. of Atty Genl* (1907), 555.

If a voter makes a voting mark in the circle at the head of a ticket and also before the names of two or more candidates on the same line on other tickets of such group of candidates, he must also indicate by voting marks in the voting spaces the individual candidates of the ticket voted by him in the circle if he wishes to vote for a candidate of such party or such group. *Rept. of Atty. Genl*, Oct. 26, 1909.

Cross marks before the name of the same candidate for the same office in two different columns are to be regarded as surplusage merely and do not render the ballot invalid as a ballot marked for identification. *People ex rel Feeny v Board of Canvassers* (1898), 156 N. Y. 39, mod'fd 23 App. Div. 201, 48 N. Y. Supp. 886, motion for rehearing denied 156 N. Y. 688.

Ballots which show a cross mark before the names of opposing candidates for the same single office are not thereby wholly invalidated but cannot be counted for the office particularly affected by the voting marks. *People ex rel Feeny v Board of Canvassers* (1898), 156 N. Y. 39, mod'fd 23 App. Div. 201, 48 N. Y. Supp. 886, motion for rehearing denied 156 N. Y. 688.

Cross marks opposite names of two candidates for same office in different columns but not on same horizontal line do not vitiate ballot. The elector should be regarded as having exercised his right to select which one of the two candidates in the different columns he cast his vote for. *People ex rel Freney v Board of Canvassers* (1898), 156 N. Y. 39, mod'f'g 23 App. Div. 201, 48 N. Y. Supp. 866, motion for rehearing denied 156 N. Y. 686.

A ballot with crosses opposite two candidates for the same office is ineffective only as to that office. *People ex rel Brown v Bd of Suprs., Nassau Co.* (1915), 170 App. Div. 358, 156 N. Y. Supp. 214; modified 216 N. Y. 732. *People ex rel Brown v Bd of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. Supp. 732. *Matter of Brown v Bd of Canvassers, Queens Co.* (1915), 170 App. Div. 476, 155 N. Y. Supp. 979, modified 216 N. Y. 732.

A ballot which though indorsed "marked for identification," has a mark opposite the name of the candidate so as to make it void, should not be counted. *People ex rel Brown v Bd of Suprs., Nassau Co.* (1915), 170 App. Div. 358, 156 N. Y. Supp. 214, modified 216 N. Y. 732.

Return inconsistent with indorsements. Where the written return of election officers giving the number of void ballots is inconsistent with the indorsements upon the ballots themselves, the particular indorsements should prevail over the written return. *Matter of Brown v Bd of Canvassers, Queens Co.*, 170 App. Div. 476, 155 N. Y. Supp. 979; modified 216 N. Y. 732.

Where there is no indorsement on a ballot and it is not clear or apparent whether or not it was originally counted, it cannot be considered on a recount. *People ex rel Brown v Bd of Suprs., Nassau Co.* (1915), 170 App. Div. 358, 156 N. Y. Supp. 214, modified 216 N. Y. 732.

Ballots indorsed under an auxiliary writ of mandamus, cannot be deducted, where it does not appear that there were marks or indorsements made on election night that would serve to identify them so that inspectors could subsequently indorse them. *People ex rel Brown v Bd of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

Ballots on which there are no certain original indorsements cannot be deducted from the count, although they have been indorsed under an auxiliary writ of mandamus as void for one office and counted for all other offices. *People ex rel Brown v Bd of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205, modified 216 N. Y. 732.

Where a ballot has been indorsed "spoiled" at the original canvass the inspectors cannot be compelled by a writ of mandamus to indorse it "wholly void." Such a ballot should not be added to the vote of a candidate, although valid as to him. *People ex rel Brown v Bd of Suprs., Nassau Co.* (1915), 170 App. Div. 358, 156 N. Y. Supp. 211, modified 216 N. Y. 732.

Unidentified ballots. Where a return shows twenty-four void ballots and the envelope six ballots, and there were eighteen ballots unaccounted for, and the package taken from the box of ballots by the inspectors contains twenty-nine ballots, of which nine are blank, and it cannot be determined which of the other twenty ballots are the missing eighteen void ballots, none of the ballots should be counted. *People ex rel Brown v Bd of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

Ballots should not be counted for another candidate which are void because of improper marks in voting space. *People ex rel Brown v Bd of Suprs., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205, modified 216 N. Y. 732.

Attempting to vote for three candidates for same office by placing voting marks opposite their names when only two candidates are to be elected does not wholly destroy the ballot or require the inspector to throw it out, but only to exclude the vote as to the particular office affected, it being impossible to determine the elector's choice for the office. *People ex rel Freney v Board of Canvassers* (1898), 156 N. Y. 39, mod'f'g 23 App. Div. 201, 48 N. Y. Supp. 866, motion for rehearing denied 156 N. Y. 686.

If an elector in voting a split ticket does not place his mark in the voting space and opposite the name of the candidate voted for, according to the strict letter of the election code, his ballot cannot be counted. *People ex rel Wells v. Collin* (1897), 19 App. Div. 457, 46 N. Y. Supp. 701, aff'd 154 N. Y.

70. People ex rel. St John v. County Canvassers of Oneida (1892), 129 N. Y. 550; 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

A voter of a split ticket must place his "X" mark in the "voting space" before the name of the candidate. If he places the mark before the name, but not in the "voting space," the ballot is void. People ex rel. Wells v. Collins (1897), 19 App. Div. 437, 46 N. Y. Supp. 701, aff'd 154 N. Y. 750.

A blur upon a ballot, apparently caused by a wet or dirty finger, is not to be regarded as an erasure made or attempted. Matter of Holmes (1895), 34 Misc. 127, 61 N. Y. Supp. 775.

A ballot is void if there is any mark upon it other than a cross mark made for the purpose of voting. Matter of Holmes (1895), 30 Misc. 127, 61 N. Y. Supp. 775.

**Marking ballot for identification.**—Where it appears that a voter, after making his cross mark in the circle at the head of the Republic column, and wishing to vote for a particular candidate for assessor, made a single "X" mark in the column opposite to the name of that particular candidate for assessor, but discovering that he had made a cross mark in the square opposite to the name of the candidate for assessor in the first column, the court finds as a fact that the ballot was marked for that candidate, and it should not be rejected for that reason. Matter of Holmes (1911), 86 Misc. 783.

In a criminal trial of an inspector of election charged with having made a false statement of the contents of a ballot, it is a matter of course of the weight of the trial judge's discretion to refuse to admit evidence in respect of the contents of the ballot, if the evidence is not material to the issue. People v. Stief and his wife, in reference to the election of voters and to the election of judges, with reference to said law. People v. Stief and his wife (1910), 102 Misc. 400, 171 N. Y. Supp. 113.

### § 369. Objections to the counting: disposal of ballots.

If objection is taken to the counting of any ballot or section, the board of inspectors shall forthwith and before canvassing any other ballot or section rule upon the objection. If the objection is sustained after this ruling, the chairman, or if he refuse, one of the other inspectors, shall write in ink upon the back of the ballot a memorandum of the ruling and objection. The memorandum of the ruling shall be in the words "Counted void," or "Counted blank," or "Counted for (naming the candidate or candidates or the presidential ticket)," or, in the case of a question submitted "Counted for Question No. —," or "Counted against Question No. —," as the case may be. The memorandum of the objection shall be in the words "Objected to," followed by a brief statement of the nature of the objection and the signature of the chairman or other inspector.

Any ballot as to the counting of which objection is not taken but which is wholly blank or wholly void shall be indorsed in ink by the chairman of the board of inspectors, or if he refuse, by one of the other inspectors, with the words, "Wholly blank" or "Wholly void," as the case may be, and this memorandum of indorsement shall be followed by the signature of the chairman or other inspector.

In each case in which objection is taken or in which any ballot is canvassed as wholly blank or wholly void, each poll clerk shall tally once in the place provided at the foot of the tally sheet.

When all the ballots of any one kind shall have been canvassed, the chairman of the board of inspectors or, if he refuse, one of the other inspectors, shall carefully and securely place all the ballots of that kind as to the counting of which any objection was taken, all ballots which are wholly void, and ballots which are wholly blank in a separate sealed package which shall be indorsed on the outside thereof with the names of the inspectors, the designation of the election district and the number and kind of ballots contained therein. The package so sealed shall be known as the package of protested, void and wholly blank ballots and shall be disposed of as hereinafter provided in sections three hundred and seventy-six, three hundred and seventy-

seven, three hundred and seventy eight and three hundred and eighty of this chapter. The other ballots shall be tied together, labeled, and returned to the ballot box from which they were taken before proceeding to canvass the next kind of ballots to be canvassed.

Any inspector who shall refuse to write in ink upon the back of any ballot a memorandum of a ruling or objection to the counting thereof or shall refuse to place in the package of protested ballots any ballot as to the counting of which any objection has been taken, shall be guilty of a felony.

Derivation: Election Law, § 119, pt. of subd. 3, as amended by L. 1898, ch. 17, § 1.

Amended by L. 1913, ch. 821 in effect Dec. 17, 1913.

Cross-references. See notes to Election Law, §§ 358 and 364.

Secrecy is the idea at the foundation of the ballot law, and any construction which would permit the ballots to be counted that would reveal the vote of the voter using them voted should be avoided as contrary to the true policy and intent of the law. People ex rel. Nichols v. Bd. of Canvassers, 1892, 129 N. Y. 401.

Ballots incorrectly numbered are "marked ballots" within the statute and should not be received by the inspectors. But once received and placed in the box with the stubs containing the numbers torn off, they should be counted. People ex rel. Bradshaw v. Reuben, 1893, 69 Hun. 306, 27 N. Y. Supp. 77.

Ballots wrong as to form in that they contain more candidates for a certain office than there are persons to be elected to such office shall be regarded and treated as valid, although unofficial ballots. But votes cast by the use of such ballots for more candidates than should be voted for cannot be counted because they fail to express the elector's choice for the office, and if there is a ballot cast only containing the proper number of candidates for an office, each ballot shall be counted and the officers thereby voted for declared elected. Montgomery v. O'Dell (1893), 67 Hun. 160, 51 N. Y. St. Rep. 444, 22 N. Y. Supp. 412, aff'd 142 N. Y. 665.

Where but one legal vote was cast for a candidate for an office required by law to be filled at that election, such candidate was rightfully declared elected though not regularly nominated, and his name not printed on the official ballot. Montgomery v. O'Dell (1893), 67 Hun. 160, 51 N. Y. St. Rep. 444, 22 N. Y. Supp. 412, aff'd 142 N. Y. 665.

The eligibility of a person voted for cannot be decided by inspectors of elections; their duty is to count the votes cast for any and every person whose name appears upon a ballot printed and indorsed as the law directs. People ex rel. Bradley v. Shaw, 1892, 64 Hun. 305, 45 N. Y. St. Rep. 533, 19 N. Y. Supp. 302, aff'd 133 N. Y. 493.

Prior to the legislation of 1890, ballots could be counted for candidates for whom they were cast though they did not in all respects correspond with the direction of the statute and after deposited in the box could not be rejected in any case by the canvassers if the intent of the voters was sufficiently expressed. People ex rel. Nichols v. Board of Canvassers, 1892, 129 N. Y. 401.

Power to reject votes. — The power given to canvassers to reject ballots is strongly confirmed in People ex rel. Essey v. Bd. of Canvassers (1897), 23 App. Div. 201, 48 N. Y. Supp. 506, modified 136 N. Y. 36.

Boards of inspectors of election have no power conferred upon them to correct frauds or rectify mistakes except clerical ones. Their duty is simply to count the ballots actually in the box at the close of the polls. People ex rel. Blaggett v. Board, 44 N. Y. St. Rep. 738, 19 N. Y. Supp. 266.

Canvassers must reject and treat as void all ballots found in the box prepared for and bearing the designation and number of another and a different polling place or election district than the one where the ballot was cast. People ex rel. Nichols v. Board of Canvassers, 1892, 129 N. Y. 394, 405.

Ballots misplaced. — The election officers may be compelled to place void and protested ballots in separate sealed packages where they have not already done so, provided such ballots can be afterwards identified. People ex rel. Brown v. French (1915), 168 App. Div. 370, 153 N. Y. Supp. 277, modified 215 N. Y. 356.



A paper filed by a duly appointed challenger for a political party merely questioning the capacity of certain persons in the military service to vote and not relating to the form or marking of any of their ballots, constitutes a challenge and not a protest, and was properly overruled by the inspectors of election. The ballots of such voters when subsequently counted were not "protested" and, therefore, the inspectors cannot be ordered to place such ballots among "protested, void and wholly blank ballots." *Peo. ex rel. Furke v. Bantz*, No. 2 (1918), 181 App. Div. 712, 168 N. Y. Supp. 968, *aff'd* 222 N. Y. —.

### § 370. Proving the tallies.

1. *Proving the tally of ballots other than those for presidential electors.* Immediately upon counting the vote for any question, or for any office other than that of presidential elector, the poll clerks shall verify their figures by adding together all the votes tallied therefor, whether for a candidate, or for or against a question, or as void or blank. If, in a case where more than one candidate is to be elected to one office, the number of votes tallied (including void and blank votes) does not exactly equal the number of ballots cast (including void and blank ballots) multiplied by the number of candidates to be elected, or if, in the case of a question submitted or in a case where only one candidate is to be elected to an office, the total number of votes tallied (including void and blank votes) shall not exactly equal the number of ballots cast (including void and blank ballots), an error has been committed and a recanvass must be immediately made, as hereinbefore provided in section three hundred and sixty-eight of this chapter.

2. *Proving the tally of ballots for presidential electors.* In the case of ballots for presidential electors, the poll clerks shall verify their figures as follows:

First, they shall add together the votes counted for electors of each party;

Second, they shall add together the votes counted for candidates not on the ballot;

Third, they shall add together the void and wholly blank ballots and shall multiply the sum so obtained by the number of electors to be elected;

Fourth, they shall add together the votes on the split ballots tallied as blank;

Fifth, they shall then add together the four sums so obtained.

If the total of these four sums shall not exactly equal the number of ballots cast (including void and blank ballots) multiplied by the number of electors to be elected, an error has been committed, and a recanvass must be immediately made as hereinbefore provided in section three hundred and sixty-eight of this chapter.

Derivation: Election Law, § 110, pt. of subd. 3, as amended by L. 1893, c. 22, § 7.

Amended by L. 1913, ch. 821 in effect Dec. 17, 1913.



Care in following statutory provisions. — Where a ballot is not void but is to be dealt with as objected to because marked for identification, great care should be observed to follow every provision of the statute designed to identify or preserve the ballot for future legal proceedings. *People ex rel. White v. Board of Aldermen of Buffalo*, (1898) 137 N. Y. 431, mod'g 31 App. Div. 438, 53 N. Y. Supp. 643.

No power to reject ballots marked for identification. — A canvassing board has no power to reject ballots which are marked for identification, and a mandamus will not lie to require them to do so. *In re Kline*, (1896) 17 Misc. 672, 40 N. Y. Supp. 600; *People ex rel. McLaughlin v. Ammenwerth*, (1910) 197 N. Y. 340, aff'g 135 App. Div. 893, 120 N. Y. Supp. 295.

Inspectors have no right to reject a ballot because it bears marks which they think were placed upon it by the voters for the purpose of identifying it, but they must count such ballots and indorse them "protested as marked for identification." *Matter of Houlihan*, (1907) 55 Misc. 5, 106 N. Y. Supp. 203.

Where inspectors, pursuant to a writ of mandamus, have corrected their return by counting ballots protested as marked for identification, a subsequent writ does not lie to compel the board of county canvassers to direct the election inspectors to again change the return so that the figures conform to the tally sheet of the votes in that district. Such relief would in effect reverse the prior order. *People ex rel. McLaughlin v. Ammenwerth*, (1910) 197 N. Y. 340, aff'g 135 App. Div. 893, 120 N. Y. Supp. 295.

A single inspector cannot indorse upon a ballot an objection raised subsequently to the canvass that it was marked for identification. *People ex rel. Bush v. Board*, (1893) 66 Hun. 263, 21 N. Y. Supp. 279.

Inspectors are liable in damages for refusing to perform any of the acts required by the statute in relation to ballots objected to as marked for identification. *People ex rel. Haabrouck v. Supervisors*, (1892) 135 N. Y. 522.

When the objection to ballots as marked for identification is not raised during the canvass, a mandamus will not lie to compel the inspectors to reconvene and recount the ballots. The remedy left open is by quo warranto, or by the determination of the board to which an officer is declared elected by the canvass objected to. *People ex rel. Clark v. Earley*, (1896) 16 Misc. 603, 40 N. Y. Supp. 557.

### § 371. General provisions as to canvass.

The ballots shall at all times be kept on top of the table and in plain view of all parties entitled to examine them, until they have been tied into bundles as elsewhere provided. If requested by any person entitled to be present the inspector shall, during the canvass of any ballot, exhibit to him the ballot then being canvassed, fully opened and in such a condition that he may fully and carefully read and examine it, but no inspector shall allow any ballot to be taken from his hand or to be removed from any pile by any person but the chairman. Any person other than a constituted election officer who shall handle any ballot voted or unvoted or the stub thereof shall be guilty of a misdemeanor. Any person who shall mark, tear or deface any ballot of another with the intent of

defeating or altering a vote or ballot, shall be guilty of a felony, and shall be punished upon conviction thereof by imprisonment in a state prison for a period of not less than five nor more than ten years.

*Derivation:* Election Law, § 110, pt. of subd. 3, as amended by L. 1909, ch. 335, § 7.

*Amended by* L. 1913, ch. 821; L. 1917, ch. 703, in effect June 1, 1917.

### § 372. Statement of canvass to be delivered to police.

In all cities and villages of five thousand inhabitants or more the chairman of the board of inspectors shall, forthwith upon the completion of the count of votes and the announcement thereof, deliver to the police officer on duty at such place of canvass a statement subscribed by the board of inspectors, stating the number of votes received by each candidate for office and the number of votes cast for and against all questions, propositions or constitutional amendments submitted. Such statement shall forthwith be conveyed by the said officer to the station-house of the police precinct in which such place of canvass is located, and he shall deliver the same in duplicate to the officer in command thereof, who shall immediately transmit by telegraph, telephone or messenger, the contents of such statement to the officer commanding the police department of such city or village. In a city of over one million inhabitants, such commanding officer shall cause all such returns to be immediately tabulated so that the final results may be known as early as possible, and within twenty-four hours of its receipt at the station-house such statement itself shall be filed with such commanding officer. Such statement shall be preserved for six months by the police, and shall be presumptive evidence of the result of such canvass for each such office.

*Derivation:* Election Law, § 110, pt. of subd. 3, as amended by L. 1909, ch. 335, § 7.

*Amended by* L. 1911, ch. 649; L. 1915, ch. 678; L. 1918, ch. 323, in effect Apr. 21, 1918.

### § 373. Returns of canvass.

Upon completing the canvass, the inspectors and poll clerks shall make and sign in ink their several returns in triplicate, and shall verify them before the respective officers authorized for that purpose, and shall sign and certify in ink each tally sheet to be certified by them. In making their returns as aforesaid, the inspectors and poll clerks shall use the printed forms supplied to them with the ballots, and they shall carefully insert in all the blank spaces thereon the appropriate names, words and figures according to the directions contained in article nine of this chapter

and printed on the forms. In the absence of an officer authorized to take acknowledgments and proof of deeds, and for the purposes of this chapter, any election officer shall be authorized to administer the oath to any other election officer. Each of the two tally sheets shall be securely attached by the chairman to one of the returns relating to the same office or question and shall be treated as a part thereof.

Any election officer who shall sign any statement of the canvass at any place other than the polling place, or at any time other than immediately after the canvass is completed, except under direction of a court, and any election officer or person who shall take from the polling place any such statement before it shall have been signed as herein provided, is guilty of a felony, and shall be punished, upon conviction thereof, by imprisonment in a state prison for not less than two nor more than five years.

If changes be necessary in any of the forms for tallies and returns, as prescribed in this article, the secretary of state shall prescribe the same.

**Derivation:** Election Law, pt. of § 111.

**Amended by L. 1912, ch. 821, in effect Dec. 17, 1912.**

**Consolidators' note.**—The direction to indorse ballots which have been protested as marked for identification is omitted, this direction having been already given fully in section 370. The expression here omitted "protested as," is better than the expression used in section 370, "objected to as," and is accordingly transplanted to that section.

**Cross-References.** For form of election returns, see Election Law, § 375. Making false return. Penal Law, § 766 (part 5, part). Correction of errors in statement. Election Law, § 432. Canvass of vote and proclamation of result where voting machine used. Election Law, § 413.

**Void ballots.**—The decision as to the validity of such a ballot must be made by the inspectors while making the canvass and calls for a summary determination upon a mere inspection of the ballot itself. If its markings do not substantially comply with the rules and requirements of the Election Law, it must be a null and void and returned endorsed by the inspectors as void. *Matter of Hooligan*, (1907) 55 Misc. 8, 106 N. Y. Supp. 205.

**An erasure or alteration visible upon the face of a statement of canvass** will not create the presumption of fraud. Election returns are documents of a public nature, and in the absence of proof that they have been fraudulently tampered with will be received as evidence in courts of justice. *People ex rel Stone v. Minck*, (1860) 21 N. Y. 539.

**A new statement of canvass cannot be made** by the inspectors after the completion and filing of the original statement. Boards of inspectors cannot thus review their own acts. *People ex rel Russell v. Board*, (1887) 46 Hun 390, 20 Abb. N. C. 19.

**Inspectors having made a canvass cannot be compelled or permitted**

to make a new one. *People ex rel. Fiske v. Devermann*, (1894) 83 Hun 81, 21 N. Y. Supp. 593.

**The signing of a statement in blank in advance of the canvass is wrong and irregular, but if, by the consent and action of the canvassers the statement is filled up with the result agreed upon by all of their number the statement becomes effective.** *People ex rel. Fiske v. Devermann*, (1894) 83 Hun 81, 21 N. Y. Supp. 593.

**When inspectors of election have made and signed their statement they are discharged, and cannot afterwards indorse ballots and affix them to the statement.** *Matter of Kline*, (1896) 17 Misc. 672, 40 N. Y. Supp. 620. *People ex rel. Bush v. County Canvassers of Ulster*, (1892) 66 Hun 265, 21 N. Y. Supp. 279. *People ex rel. Guige v. Reardon*, (1886) 40 Hun 426.

Where it appears that ballots were not marked at the time and in the manner required by the statute neither the board of inspectors, nor a member thereof with its permission, can thereafter attach to the statement of the canvass theretofore filed ballots alleged to have been marked for identification. *People ex rel. Bush v. County Canvassers*, (1892) 66 Hun 265, 21 N. Y. Supp. 279.

Ballots which have been preserved in violation of law and have been out of the possession of the election officer should not thereafter be allowed to be attached to the statement of the canvass. *People ex rel. Bush v. County Canvassers*, (1892) 66 Hun 265, 21 N. Y. Supp. 279.

**Returns as evidence.**—Though the election laws do not, in terms, declare that the return of votes made by the inspectors of election or canvassers shall be evidence in courts of justice, they are so, upon general principles. *People ex rel. Stone v. Minck*, (1860) 21 N. Y. 539.

**The making of returns by inspectors of election is a ministerial act.** *Morgan v. Quackenbush*, (1856) 22 Barb. 721.

**Signing returns.**—Where inspectors counted the ballots cast and declared the result but refused to sign the election returns upon the sole ground that fraudulent votes were cast by persons not registered, but who falsely personated registered voters and who upon being duly sworn gave answers that were "unsatisfactory," a peremptory writ of mandamus should issue to compel such inspectors to sign the returns. *People ex rel. Stapleton v. Bell*, (1890) 119 N. Y. 175.

**If inspectors of election indorse on the return their reasons for not signing the same, they cannot be proceeded against to show cause why they did not do so.** *In re Election of Alderman of First Ward of City of Buffalo*, 49 N. Y. Supp. 241.

**Where two inspectors sign the statement of canvass and to refuse to sign, and the questions of fraud raised were never finally determined by legal proceedings, there was no election.** *People ex rel. Woods v. Crissey*, (1883) 91 N. Y. 616, rev'g 28 Hun 418.

**Where a copy of a statement of inspectors of election certifies a different number of votes than there were in the tally sheet they must correct the same.** *Matter of Stewart*, (1897) 24 App. Div. 201, 48 N. Y. Supp. 457.

The fact that a board of canvassers in an election district stated on one page of the return that "the whole number of 'questions submitted' ballots actually voted were none," while upon another page of the returns they correctly certified the number of votes cast upon the question does not render it necessary to exclude such votes from the canvass where it appears that the word "none" was inserted by the inspectors under misapprehension. *People ex rel. Williams v. Board of Canvassers*, (1905) 105 App. Div. 197, 94 N. Y. Supp. 996, aff'd 183 N. Y. 538.

**Mandamus to compel compliance with this section.**—Where it appears that the board of canvassers omitted to indorse their reasons upon the back of ballots rejected as void, and omitted to place these ballots in a sealed package and file the same with the original statement of the canvassers, and that they improperly replaced these void ballots with the others in the ballot box, any person aggrieved or interested would be entitled to a writ of mandamus, without seeking authority therefor in the Election Law, compelling the board of canvassers to convene and do what they omitted to

**2a. People ex rel. Maxim v. Ward (1901), 62 App. Div. 531, 71 N. Y. Supp. 78.**

Although a proceeding under this section in which the facts whether objection was made to certain marked ballots at the time of canvass, etc., are disputed, might call for the issuance of an alternative writ of mandamus, yet relief cannot be granted upon application for peremptory writ. *People ex rel. Bush v. County Canvassers*, (1892), 66 Hun, 265, 21 N. Y. Supp. 279.

Failure to file returns and to seal and deliver ballot box. -- Where due opportunity has been given to electors to vote for or against local option and the votes have been cast and canvassed, the result declared, and the returns made by the ballot clerks, the failure of the inspectors to make and file the returns and to seal and deliver the ballot box to the proper custodian does not invalidate the election. *Matter of Norton* (1912), 153 App. Div. 626.

### § 374. Preservation of ballots.

After the last tally sheets and returns are completed, and all the stubs and ballots, except the protested, void and wholly blank ballots, are replaced in the boxes from which they were taken, each box shall be securely locked and sealed, and deposited, by an inspector designated for that purpose, with the officer or board furnishing it, together with the separate sealed package of unused official ballots. The boxes and packages so deposited shall be preserved inviolate for six months after the election, except that they may be opened and their contents examined upon the order of any court of competent jurisdiction or may be opened by direction of a committee of the senate or assembly to investigate and report upon contested elections of members of the legislature voted for at such election and their contents examined by such committee in the presence of the officer having the custody of such boxes. Unless ordered to be preserved by such a court, or unless an examination by such a committee be pending, they shall be opened and their contents destroyed after six months, except, that in a year in which a president of the United States is to be elected, in counties in which no contest has been noted, such boxes may be opened and their contents destroyed after four months and the boxes prepared for use at the primary election as provided in section seventy-nine of this chapter. The protested, void and wholly blank ballots shall be preserved as provided in section four hundred and thirty-seven of this chapter. Any candidate shall be entitled as of right to an examination in person or by authorized agents of any ballots upon which his name lawfully appeared as that of a candidate; but the court shall prescribe such conditions as of notice to other candidates or otherwise as it shall deem necessary and proper.



Derivation: Election Law, pt. of § 111.

Amended by L. 1913, ch. 821, L. 1916, chs. 31, 537, in effect May 15 1916.

The purpose of the statute requiring a preservation of ballots is that they may be used as evidence upon a criminal prosecution or in an action to determine which candidate was elected to office. *People v. McClellan* (1908), 129 N. Y. 341, rev'g 124 App. Div. 215, 108 N. Y. Supp. 765.

This section does not confer authority upon the county court to judicially investigate the manner in which the right of suffrage has been exercised or to order a recount or canvass of the ballots cast at an election by a board of canvassers before a referee. *Matter of Tompkins* (1897), 23 App. Div. 224, 48 N. Y. Supp. 737.

An order directing the opening of a ballot box and the inspection of the ballots will not be granted on the application of one of the candidates, upon a claim that by mistake or otherwise the figures shown by the count of the split ballots were transposed on the statement made by the inspectors. *Matter of Election of Members of Assembly for First District of Erie County* (1896), 18 Misc. 301, 77 N. Y. St. Rep. 710, 43 N. Y. Supp. 710.

Where no judicial proceedings are pending and it does not appear that any will be brought, the court is without power to grant an order under section 374 to open ballot boxes containing ballots not void or protested upon the application of parties who allowed the time within which they might have applied for a mandamus under section 381 to expire. *Matter of Ulrich* (1910), 67 Misc. 196.

This section authorizes the court to open ballot boxes and permits their contents to be examined, but it does not confer the power to direct a recount and, therefore, mandamus will not lie to compel it. *People ex rel. March v. Beam* (1907), 188 N. Y. 266, mod'f'g 117 App. Div. 374, 103 N. Y. Supp. 818.

Where inspectors of a village election, in spite of written and oral protests receive ballots which are not only unofficial, but objected to as marked for identification and count them, and then cause them to be locked and sealed up with the valid ballots, their action is in violation of this section and the Supreme Court has the power and jurisdiction to command that the ballot box containing these void, unofficial and protested ballots be opened and these ballots removed and placed in a package and disposed of according to the commands of said section. *People ex rel. March v. Beam* (1907), 188 N. Y. 266 mod'f'g 117 App. Div. 374, 103 N. Y. Supp. 818.

This section confers no power upon the court or judge to order a recount of the ballots, but has for its purpose the preservation of the ballots which have been counted as valid by the election board, for use in judicial or legislative proceedings as evidence upon which to determine the title of an officer elected. *Matter of Hearst v. Woelper* (1905), 183 N. Y. 274, rev'g 110 App. Div. 110, 96 N. Y. Supp. 341, mod'f'g 48 Misc. 453, 96 N. Y. Supp. 119.

If a ballot is marked "protested," "wholly void" or "wholly blank" have been deposited in the ballot box instead of being placed in a separate package, the court may determine that such ballots were improperly canvassed by the board of inspectors and order the error corrected. The correction should be made by the board of inspectors, and not by the board of elections or the county board of canvassers. *People ex rel. Carter v. County Bd. of Canvassers* (1914), 165 App. Div. 112, 150 N. Y. Supp. 450.

**Examination after completion of canvass.** Upon an application for an order permitting examination of ballots cast at a general election and fixing the time therefor the court may properly consider facts relating to the canvass of the vote and determine that it is proper, under the circumstances, that the examination should take place even after the canvass of all votes is completed. *Matter of Whisman* (1918), 225 N. Y. 21.



**Authority conferred limited.**—While the court may permit a ballot box to be opened and the ballots upon which the name of the applicant candidate appears to be examined, the authority conferred is limited to an examination of the ballots. Jurisdiction is not granted to direct a recount or canvass. *People ex rel Brown v. French* (1915), 216 N. Y. 306, reported below, 168 App. Div. 370, 153 N. Y. Supp. 277.

Any candidate voted for at a general election is entitled to an examination as of right of any ballots upon which his name lawfully appears as that of a candidate, whether the validity of the controversy is in question or not. *Matter of Quinn* (1917), 220 N. Y. 623, aff'g 175 App. Div. 681, 160 N. Y. Supp. 807.

A candidate for a town office is entitled to an examination. And when the time set for the inspection has expired, the opposing candidate is entitled to another notice. *Matter of Quinn* (1916), 175 App. Div. 681, 160 N. Y. Supp. 807, 220 N. Y. 623.

**Quo warranto to determine title to office.**—Where, in an action of quo warranto to determine a title of an office, the plaintiff serves a bill of particulars pursuant to an order directing the attorney general to specify the particulars of the errors, miscounts and illegal acts alleged in the complaint, which stated some of the particulars required, and alleged that further particulars could not be had as the ballots cast in the election in question were retained in boxes in the custody of the board of elections, under lock and key, and that no person had been permitted to open and examine their contents, the plaintiff could not be precluded from giving evidence of fraud, error, omission or mistake except in the election districts specified in the bill of particulars. *People v. McClellan* (1908), 191 N. Y. 341, rev'g 124 App. Div. 215, 108 N. Y. Supp. 765.

In an action of quo warranto to determine the title of an office, any ballot box may be opened and its contents recounted without preliminary evidence tending to show some misconduct, error, omission or fraud in counting or canvassing of the votes or in the returns. *People v. McClellan* (1908), 191 N. Y. 341, rev'g 124 App. Div. 215, 108 N. Y. Supp. 765.

**Sealing boxes.**—The provision of L. 1872, ch. 575, an act to regulate elections in the city of Brooklyn, that after the canvass is completed the ballots are to be returned to the ballot boxes, and said boxes were to be "securely sealed up by the canvassers," contemplated that the boxes shall be so sealed that they cannot be opened without breaking the seal. Where the inspectors sealed the apertures of the boxes through which the ballots were inserted, and the canvassers did not remove these seals but delivered the boxes to the police department without further sealing, it was held not in compliance with the act.

But where it is proved satisfactorily that the boxes had been kept "undisturbed and inviolate" the omission of the canvassers to seal up the boxes as contemplated did not render the ballots inadmissible in evidence. *People ex rel Bailey v. Livingston* (1879), 79 N. Y. 279, rev'g 18 Hun, 59.

As to effect of failure to seal and deliver ballot box upon validity of local option election, see *Matter of Norton* (1912), 152 App. Div. 629.

**Custody of boxes.**—The court will not order ballot boxes to be taken from their legally designated custodians, nor guards of such boxes to be appointed or continued without proof of facts affording reasonable grounds for the fear that they will be tampered with or that they are exposed to the danger of loss. *People v. McClellan* (1907), 52 Misc. 614, 163 N. Y. Supp. 827, aff'd, 118 App. Div. 177, 163 N. Y. Supp. 146, aff'd, 198 N. Y. 618.

**Preservation of boxes after statutory time.**—Although this section provides for the destruction of ballots after the expiration of six months, yet, when new ballot boxes have been acquired and the controversy is opened as to the legality of an election, an order requiring the preservation of the ballots after the statutory time will not be vacated. *Matter of Hearst* (1907), 117 App. Div. 240, 102 N. Y. Supp. 47.

An application to relieve from an order preserving ballots after the expiration of six months should be made by the board of elections against whom it operates rather than by the office holder whose election is contested. *Matter of Hearst* (1907), 117 App. Div. 240, 102 N. Y. Supp. 47.

This section has no application to voting machines, and is not made applicable by section 417, which merely declares that other articles of the Election Law, not applicable to voting machines generally, shall apply to voting by such machines. This provision is not broad enough to warrant the granting of an order for the examination of voting machines analogous to an order for the examination of ballot boxes under this section. *Matter of Thoms* (1915), 216 N. Y. 426, rev'g 171 App. Div. 977; see 92 Misc. 183, 156 N. Y. Supp. 45.

### § 375. Proclamation of result.

Upon the completion of such canvass and of the statements of the result thereof, the chairman of the board of inspectors shall make public oral proclamation of the whole number of votes cast at such election at such polling place for all candidates for each office; upon each proposed constitutional amendment or other question or proposition, if any, voted upon at such election; the whole number of votes given for each person, with the title of the office for which he was named on the ballot; and the whole number of votes given respectively for and against each proposed constitutional amendment or other question or proposition, if any, so submitted.

Derivation: Election Law, pt. of § 112.

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913.

Forms. Form of proclamation of result. See Forms (part 12, post).

### § 376. Sealing statements.

Each statement of canvass shall then be securely sealed with sealing wax in separate envelopes properly indorsed on the outside thereof by the inspectors, and shall be kept inviolate by the officers or board with whom they are filed until delivered, together with the packages of protested, void and wholly blank ballots, to the county or city board of canvassers.

Derivation: Election Law, pt. of § 112.

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913.

Sealing statements. — The fact that the original statements canvassed from a number of election districts were not safely sealed with sealing wax does not invalidate the submission of a question at an election, where it appears that the omission to comply strictly with the requirements of the statute was unintentional and that the irregularities did not result in the perpetration of any fraud. *People ex rel. Williams v. Board of Canvassers* (1906), 106 App. Div. 197, 94 N. Y. Supp. 996, aff'd 183 N. Y. 538.

**§ 377. Delivery and filing of papers relating to the election; general provisions.**

If the election be other than an election of town, city, village or school officers, held at a different time from a general election, the chairman of the board of inspectors of each election district, except in the city of New York shall forthwith upon the completion of the triplicate statement of the result, deliver one set of returns to the supervisor of the town in which the election district, if outside of a city, is situated, and if in a city, to one of the supervisors of said city. If there be no supervisor, or if he be absent or unable to attend the meeting of the county board of canvassers, it shall be forthwith delivered to an assessor of such town or city. One set of returns with tally sheets annexed, together with the poll books of the election at an election at which the poll books used are separate from the register shall be forthwith filed by such inspectors, or by one of them deputed for that purpose, with the town clerk of such town, or the city clerk of such city, as the case may be. The package of protested, void and wholly blank ballots and the third set of returns with tally sheets annexed shall, within twenty-four hours after the completion of such canvass, be filed by the chairman of the board of inspectors, with the board of elections of the county in which the election district is situated. Each poll book containing signatures of electors required by this chapter to sign the poll book, if such book be separate from the register, and all "identification statements for election day" received thereat shall within forty-eight hours after the close of the canvass be filed in person or by mail by the poll clerk of each election district having charge of such book, with the state superintendent of elections in such one of his offices as he may in writing designate.

**Derivation:** Election Law, § 113, subd. 1, as amended by L. 1897, ch. 379, § 20; L. 1905, ch. 165, § 1, ch. 643, § 20, and L. 1908, ch. 464, § 1.

**Amended by** L. 1911, ch. 649; L. 1913, ch. 821; L. 1916, ch. 537; L. 1919, ch. 504, in effect Oct. 1, 1919.

**Cross-references**—Destruction or delay of election returns. Penal Law, § 1429 (part 5, *post*).

**When filing a nullity.**—After inspectors of election have filed their statement, as required by law, a paper by part of the board of inspectors, made and filed with the city clerk two days later, is a nullity. *People ex rel. Brennan v. City of Kingston* (1891), 59 Hun 617, 13 N. Y. Supp. 215; *Bren-*

*man v. Beck*, 50 Hun. 617, 13 N. Y. Supp. 216; *Halloran v. Carter*, 50 Hun. 617, 35 N. Y. St. Rep. 884, 13 N. Y. Supp. 214.

When failure to file in time does not invalidate election.—The fact that the election returns from a number of election districts were not filed with the county clerk within twenty-four hours after the completion of the canvass, does not invalidate the election, where it appears that such failure was due in one instance to the fact that the inspector who carried the returns was unable to reach the county clerk's office within the prescribed time and in the other instance to the fact that the election returns originally attempted to be filed were found to be defective. *People ex rel. Williams v. Board of Canvassers* (1905), 105 App. Div. 197, 94 N. Y. Supp. 396, *aff'd* 183 N. Y. 538.

*Mandamus* will lie to compel inspectors of election to perform their official duties in relation to the making and filing of true copies of the original statement of canvass. *Gleason v. Blane*, 14 Misc. 629, 36 N. Y. Supp. 938.

No duty rests upon two of the members of a board of canvassers to withdraw a certificate of canvass improperly made and filed by them, which certificate was made subsequently to the close of the canvass after a valid certificate of canvass had been made and filed. *People ex rel. Fuske v. Deyerman* (1894), 83 Hun. 181, 31 N. Y. Supp. 593.

### § 378. Delivery and filing of papers in the city of New York.

In the city of New York the package of protested, void and wholly blank ballots and one set of returns with tally sheets annexed, together with one of the poll books, shall be filed by the chairman of the board of inspectors within twenty-four hours after the completion of the canvass with the county clerk of the county within which the election district is located. One set of returns with tally sheets annexed and the other poll book shall be filed within such time with the board of elections or with the chief clerk of the branch office of the board of elections, as the case may be, in the borough within which the election district is located, by an inspector designated by the board of inspectors for that duty, and the third set of returns with the city clerk, by an inspector designated by the board of inspectors for that duty.

In election districts in the city of New York, the boards of inspectors of election must, at the same time that they make and sign the aforesaid returns, make a certified copy of so much thereof as relates to any candidate for member of assembly, senator, or representative in congress, voted for both in said election district and in any part of any county not within the city of New York, and such certified copy must, within twenty-four hours after the completion of the canvass by the inspectors, be filed by the chair-

man of the board of inspectors with the clerk of the county outside of the city of New York in which such officers or any of them are voted for at such election.

**Derivation:** Election Law, § 113, subd. 2, as amended by L. 1897, ch. 279, § 20; L. 1901, ch. 95, § 19.

**Amended by** L. 1911, chs. 274 and 649, and L. 1913, ch. 821, in effect Dec. 17, 1913.

**Consolidators' Note** - The requirement that the police shall return the package of stubs, etc., in New York city to the "bureau of elections of the borough" is changed to "board of elections or to the chief clerk of the branch office of the board of elections, as the case may be, in the borough," the former superintendent and bureau of elections with branch bureaus, in the police department, having been succeeded in 1901 by the board of elections and its branches.

### § 379. Additional requirements in the metropolitan elections district.

(Repealed by L. 1911, ch. 649, in effect July 13, 1911.)

### § 380. Delivery and filing of papers in the county of Erie.

In the county of Erie one return with tally sheets annexed shall be filed forthwith by one inspector deputed for that purpose, with the clerk of the town, or the clerk of the city of Buffalo, or the clerk of the city of Tonawanda, as the case may be, and one return with the clerk of the county of Erie. The package of protested, void and wholly blank ballots and the third return with tally sheets annexed shall, within twenty four hours after the completion of such canvass, be filed by the chairman of each board of inspectors with the commissioner of elections. All poll lists for the various election districts in the city of Buffalo shall be filed with the commissioner of elections, and those for the city of Tonawanda with the clerk of such city, and those for the towns in Erie county with the town clerks thereof.

**Derivation:** Election Law, § 113, subd. 4, as added by L. 1905, ch. 643, § 21.

**Amended by** L. 1913, ch. 821, in effect Dec. 17, 1913.

### § 381. Judicial investigation of ballots.

If any statement of the result of the canvass in an election district shall show that any of the ballots counted at an election therein were protested or were canvassed as wholly blank or void, a writ of mandamus may, upon the application of any candidate voted for at such election in such district, within twenty days



thereafter, issue out of the supreme court to the board or body of canvassers, if any, of the return of the inspectors of such election district, and otherwise to the inspectors of election making such statement, requiring a recanvass of such ballots. If the court shall, in the proceedings upon such writ, determine that any such ballot was improperly canvassed, it shall order the error to be corrected. Boards of inspectors of election districts, and boards of canvassers, shall continue in office for the purpose of such proceedings.

Derivation: Election Law, § 114.

Amended by L. 1913, ch. 821, in effect Dec. 17, 1913.

Cross-references.—See cases cited in notes to Election Law, §§ 358 and 368.

The authority conferred is confined to a review of the protested, void and blank ballots returned in the sealed package. The court may not order the election officers to open a box of voted ballots, months after an election, examine the ballots therein, and without any marks of identification appearing on said ballots, aided only by a recollection of the situation on the night of election day, endeavor to select the identical ballots declared void at the time of the canvass. Where spoiled or canceled ballots are found in envelopes, the court may order them marked as such and placed in the boxes where they properly belong. *See ex rel Brown v. Fritsch* (1915), 215 N. Y. 356, reported below 168 App. Div. 370, 153 N. Y. Supp. 277.

Certiorari does not lie to review the acts of an election board in receiving votes and announcing the result, as such acts are not judicial in character. *People v. Austin* (1897), 20 App. Div. 1, 46 N. Y. Supp. 526.

A ballot box should not be ordered opened except for the purpose of aiding a criminal prosecution or in a civil action or proceeding where the court may make a decision binding upon the parties and the public. *Matter of Election of Members of Assembly for First District, Erie County* (1896), 18 Misc. 391, 77 N. Y. St. Rep. 710, 43 N. Y. Supp. 710.

An order directing the opening of a ballot box and the inspection of the ballots will not be granted on the application of one of the candidates, upon a claim that by mistake or otherwise the figures shown by the count of the split ballots were transposed in the statement made by the inspectors. *Matter of Election of Members of Assembly for First District, Erie County* (1896), 18 Misc. 391, 77 N. Y. St. Rep. 710, 43 N. Y. Supp. 710.

Where no judicial proceedings are pending and it does not appear that any will be brought, the court is without power to grant an order under section 374 to open ballot boxes containing ballots not void or protested upon the application of parties who allowed the time within which they might have applied for a mandamus under section 381 to expire. *Matter of Ulrich* (1910), 67 Misc. 426.

Mandamus.—This section empowers the court, under the requisite allegations in behalf of a candidate voted for at an election and sufficient proof, to require, through a writ of mandamus, the board of canvassers of the return of the inspectors of election, to recanvass and correct the errors in the original canvass of the protested, or void, or blank ballots. The writ of mandamus so authorized is the ordinary writ and the ordinary and established rules and procedure are applicable to it. The applicant must, by written and verified allegations, present to the court facts which, if true and unavailed by the defensive facts, prove that he is under a grievance or injury which the writ would remedy and that he is entitled to that remedy and the averments presenting those facts and essential to the issuance of the presumptive writ cannot be upon mere information and belief of the affiant. Hence an affidavit, in a proceeding under this section which does not aver that the inspectors of election made an error or omitted any duty, is insufficient to empower the court to issue a writ of mandamus. This section authorizes exclusively the application for the writ, and the order for and its issuance in accordance with



the established rules relating to that remedy. It does not contain any provision empowering the court to order the custodian of the protested, void or blank ballots to produce those ballots to the court for any purpose. And the court cannot by the effect of any of its provisions direct the production of them. *Matter of Whitman* (1913), 225 N. Y. 1.

A writ of mandamus directing the inspectors of election of a town meeting where local option questions under the Liquor Tax Law were voted upon to count certain ballots which were by them returned as void is a proceeding that may not be entertained by virtue of any inherent powers of the court, but must find authorization and support in the express provisions of some statute or statutes. *Matter of Tamney v. Atkins* (1913), 209 N. Y. 262.

An alternative writ of mandamus should be procured so that disputed facts can be settled before the peremptory writ issues. *People ex rel. Hasbrouck v. Supervisors* (1892), 135 N. Y. 522.

There is no occasion to issue an alternative writ of mandamus, where, after the proof is all in, it appears that there is no material dispute of fact and that the right of the applicant, if he has any, depends merely upon the decision of question of law. *People ex rel. Bantell v. Morgan* (1899), 29 App. Div. 45, 46 N. Y. Supp. 898.

The alternative writ of mandamus delegates to the board of inspectors the whole matter of recanvassing the ballots, with no specific directions as to how such recanvass is to be conducted, beyond the direction that they are to follow the language of the statute. *People ex rel. Phillips v. Sutherland* (1896), 9 App. Div. 313, 41 N. Y. Supp. 181.

A peremptory writ of mandamus lies to compel the counting of votes for an office omitted to be named upon the official ballot, when written upon the ballot. *People ex rel. Goering v. President* (1894), 144 N. Y. 616, aff'd 9 Misc. 246, 30 N. Y. Supp. 285.

A peremptory mandamus will not be granted where the answering affidavits raise an issue as to material facts alleged in the petition. *Matter of Rhine* (1896), 17 Misc. 672, 40 N. Y. Supp. 600.

A peremptory writ of mandamus will not be granted to compel a recount of ballots cast at a general election rejected as void and those protested as marked for identification, where the opposing affidavits allege that packages containing such ballots were found in the county clerk's office in a place to which all persons had an easy access, that some of such packages were indorsed; that some of them were sealed and others unsealed; that many ballots were not indorsed as required by the Election Law, and that many had actually been counted for the petitioner. *People ex rel. Perry v. Board of Canvassers* (1903), 88 App. Div. 185, 84 N. Y. Supp. 406.

It seems, however, that the court would have power to issue a writ of mandamus to compel the various election officials to perform, with respect to the ballots in question the duties imposed upon them by the Election Law. *People ex rel. Perry v. Board of Canvassers* (1903), 88 App. Div. 185, 84 N. Y. Supp. 406.

Application for mandamus must show that violation of inspector was prejudicial. *People ex rel. Larkin v. Palmer* (1899), 27 Misc. 569, 59 N. Y. Supp. 62.

Mandamus will not be granted on affidavits on information and belief, which do not state source of information or grounds of belief. *People ex rel. Watkins v. Bd. of Canvassers of Oneida* (1898), 25 Misc. 444, 55 N. Y. Supp. 712.

The court must determine in the mandamus proceeding whether, under the circumstances of the particular case, there has been such a substantial compliance with the statute as will enable the candidate complaining of marked ballots to maintain the proceeding. Inspectors cannot defeat the mandamus proceeding by failing to write their names on the ballots or to make the required statement. *People ex rel. Hasbrouck v. Supervisors* (1892), 135 N. Y. 522.

The right of a claimant to an office cannot be tried by mandamus where the person claimed to have been elected illegally is actually in possession of the

office under a bona fide claim and an election that is not merely colorable. If the claimant contends that he had a majority of legal votes he must procure a quo warranto to oust the actual occupant before he can obtain a mandamus to force his own admission. *People ex rel. Gaige v. Reardon* (1888), 49 Hun, 425, 3 N. Y. Supp. 560.

**Quo warranto to oust public officer.**—Particulars required of plaintiff, in such action, as to districts in which votes were illegally cast. See *People v. McClellan* (1908), 124 App. Div. 215, 108 N. Y. Supp. 765, rev'd 191 N. Y. 341.

**A statement of canvass or certificate of election is only prima facie evidence** of the title of the persons therein declared elected to the offices mentioned in the statement or certificate. Where a proceeding by quo warranto or in the nature of quo warranto is instituted to try the right to the offices directly, it is competent to go behind the certificate or statement, which would otherwise be conclusive, to ascertain the real facts of the case. *People v. Van Slyck* (1825), 4 Cow. 297; *People v. Ferguson* (1827), 8 Cow. 102; *People v. Vail* (1838), 20 Wend. 12; *People v. Seaman* (1848), 5 Den. 409.

**The remedy for frauds and mistakes** other than clerical is by proper proceedings in court or before the board or body, to membership in which the person aggrieved is a candidate, where that board or body has the power conferred upon it to determine the qualifications and election of its own members. Mandamus is not such a proper proceeding in court. *People ex rel. Blodgett v. Board*, 44 N. Y. St. Rep. 738, 19 N. Y. Supp. 206.

**Mandamus to compel recount and recanvass.**—The Election Law does not impose the duty, nor does it confer authority, upon election officers to reconvene on a day subsequent to the completion of a canvass made by them, and recount the ballots cast at the election, and the courts have no power, express or implied, to compel such recount by mandamus. *Matter of Hearst v. Woelper* (1905), 183 N. Y. 274, rev'g 110 App. Div. 346, 96 N. Y. Supp. 341, which mod'fd 48 Misc. 453, 98 N. Y. Supp. 119; *People ex rel. Brink v. Way* (1904), 179 N. Y. 174, rev'g 82 App. Div. 82, 86 N. Y. Supp. 892; *People ex rel. Cantor v. Forman* (1915), 170 App. Div. 894, 154 N. Y. Supp. 689.

Where inspectors of election at a town meeting have failed to perform their statutory duty to count and canvass the ballots, and the town clerk has not entered the result upon his minutes, the inspectors and clerk will be required by mandamus to convene and discharge their statutory duties. *People ex rel. Sturtevant v. Armstrong* (1906), 116 App. Div. 103, 101 N. Y. Supp. 712.

In determining the ballots which shall be counted or rejected, inspectors of election act judicially and cannot be required by a common-law mandamus to decide in a particular manner. *People ex rel. Haverly v. Hanes* (1904), 44 Misc. 475, 90 N. Y. Supp. 61.

Where it appears that the board of canvassers omitted to indorse their reasons upon the back of ballots rejected as void, and omitted to place these ballots in a sealed package and file the same with the original statement of the canvassers, and that they improperly replaced these void ballots with the others in the ballot box, any person aggrieved or interested would be entitled to a writ of mandamus, without seeking authority therefor in the Election Law, compelling the board of canvassers to convene and do what they omitted to do. *People ex rel. Maxim v. Ward* (1901), 62 App. Div. 531, 71 N. Y. Supp. 76.

Inspectors may be compelled by mandamus to make further return of the

results of an election, where it appears that the return made contains clerical errors and that the canvass of the votes cast was in some respects conducted in violation of the Election Law. *People ex rel. Ranton v. Syracuse* (1895), 82 Hun 293, 34 N. Y. Supp. 601.

In a petition for mandamus under this section to obtain a recount of ballots which were counted although marked for identification and other ballots which were rejected as void, the petitioner must state the particular election districts in which the facts stated appeared upon the certified return. *Matter of Ordway* (1907), 118 App. Div. 386, 103 N. Y. Supp. 360.

In the absence of an express statutory provision, a private citizen and voter has no right, after a correct canvass of the votes cast at an election has been made, to compel a recanvass upon the sole ground that the canvass already made was not made by the officers authorized by law to make it. *Matter of Scofield v. Board of Aldermen* (1905), 102 App. Div. 358, 92 N. Y. Supp. 672.

The Supreme Court has no authority under this section or under its general power, authority and jurisdiction to determine the validity of ballots contained in the boxes deposited with the city clerk where there has been a clerical error in the returns by the election inspectors, nor to order a recount of such ballots. *People ex rel. White v. Supervisors of Albany County* (1908), 192 N. Y. 539, aff'g 125 App. Div. 911, 109 N. Y. Supp. 1142.

Mandamus is not proper remedy to test title to a public office of which there is a defect incumbent. *People ex rel. Veberforden v. Hauer* (1910), 137 App. Div. 67, 122 N. Y. Supp. 60.

**Judicial review of ballots cast.**—No provision of this section empowers the appropriate division to institute or order, as a proceeding, a judicial review of the ballots cast, or to order the special term to enter upon and conduct such a review or, in the first instance, to order the special term to inspect or investigate the ballots or to order the custodian of the ballots to produce them for the special term, nor can the provisions of § 374 be made the basis of such an order where the proceeding was expressly and concededly conducted, and from the beginning has been opposed, under § 381. *Matter of Whitman* (1915), 225 N. Y. 1.

Special acts providing for a judicial recount and recanvass of the votes cast for the office of mayor at the election of November 7, 1905, in cities of the first class, were passed by the Legislature in 1907. See chs 538 and 556, L. 1907.

A county court has no power to order a recount of ballots, nor power to appoint a referee to supervise the recount and to decide as to the validity of ballots. *Matter of Tompkins* (1897), 23 App. Div. 224, 48 N. Y. Supp. 737.

Where the returns do not agree with the tally sheet the courts can require by mandamus that the inspectors be summoned before the board of county canvassers and be compelled to amend their returns by inserting in them the results as shown by the tally sheets. *Matter of Stewart* (1897), 24 App. Div. 211, 48 N. Y. Supp. 957, aff'd 155 N. Y. 545.

In an aftermanic election in New York city where the ballot clerk's returns agreed with the statements of canvass prepared by the boards of inspectors except in a single district, in which it was conceded an error was made by the inspectors in transcribing the result of the count, which mistake the respondent consented to have corrected, an application to open the ballot boxes was denied. *Matter of Shattery* (1906), 59 Misc. 212, 100 N. Y. Supp. 419.

The intent of the voter will be effectuated as far as possible by the court's ruling as to the counting or decanting of votes. *People ex rel. Nichols v. Board of Canvassers* (1892), 125 N. Y. 491.

**Mandamus to investigate void and protested ballots.**—The power of the court in a proceeding to investigate void and protested ballots is not limited to determine whether the ballots in question are valid or void but it may go further and determine for what particular candidates they should be counted. In re "Invalid Ballots" (1905), 48 Misc. 441, 96 N. Y. Supp. 122.

If void ballots have been treated by the inspectors as ballots marked for

the purpose of identification and counted, the court has jurisdiction to pass upon them as void ballots and to direct the inspectors to make the statement on the result of the election on that basis. *People ex rel White v. Board of Aldermen of Buffalo* (1896), 157 N. Y. 431, mod'g 31 App. Div. 438, 52 N. Y. Supp. 643.

Where ballots, found in sealed packages of ballots objected to because marked for identification, are returned by the election inspectors as objected to for that reason, but are marked by them as "counted, objected to as void," the court has jurisdiction to consider their validity in general. *People ex rel. Obert v. Bourke* (1900), 30 Mac. 461, 63 N. Y. Supp. 904.

Under this section a writ of mandamus may be issued to determine whether any ballot and the votes thereon, which has been rejected by the inspectors as void, shall be counted. *Matter of Larken* (1900), 46 App. Div. 386, 61 N. Y. Supp. 597 (1899), rev'd on another ground 163 N. Y. 201.

**Mandamus to compel the counting of votes protested as marked for identification.** - Inspectors of election who have failed to count ballots protested as marked for identification will be compelled by mandamus to reconvene and correct their return and will be deemed to continue in office for that purpose. *People ex rel. McLaughlin v. Ammenwerth* (1910), 197 N. Y. 340, aff'g 135 App. Div. 893, 120 N. Y. Supp. 295.

Where such inspectors, pursuant to a writ of mandamus, had corrected their return by counting ballots protested as marked for identification, a subsequent writ does not lie to compel the Board of County Canvassers to direct the election inspectors to again change the return so that the figures conform to the tally sheet of the votes in that district. Such relief would in effect reverse the prior order. *People ex rel. McLaughlin v. Ammenwerth* (1910), 197 N. Y. 340, aff'g 135 App. Div. 893, 120 N. Y. Supp. 295.

An election will not be nullified in toto by the casting and counting of marked ballots. Such ballots will be thrown out as void, but will not operate to render void the ballots that were regular and in accordance with the provisions of the statute. *People ex rel. Bradshaw v. Bedelman* (1893), 69 Hun, 596, 23 N. Y. Supp. 954.

Unless objection is made during the canvass to a ballot as marked for identification the inspectors are not required to so indorse it nor return it with the statement of canvass. A peremptory writ of mandamus will not issue compelling the board to so indorse the ballot upon an objection made subsequent to the canvass, but an alternative writ will issue in order that the fact of the validity of the ballot may be tried. *People ex rel. Bush v. Board* (1892), 66 Hun, 265, 21 N. Y. Supp. 279.

Mandamus will not be granted to compel a board of canvassers to reconvene and recount the ballots cast at an election and allow certain ballots rejected by them, where it appears that such ballots were not objected to or marked by the inspectors as marked for identification, or attached to the statement of canvass. *People ex rel. Clark v. Earley* (1896), 16 Mac. 603, 40 N. Y. Supp. 587.

That an objection to a ballot was not raised during the canvass of the votes will not preclude the court from subsequently considering such objection. *People ex rel. Hasbrouck v. Supervisors* (1892), 135 N. Y. 622.

Whether a ballot is or is not a marked ballot is an open question to be

determined as an issue of fact by the court. *People ex rel. Hasbrouck v. Supervisors* (1892), 133 N. Y. 522.

Inspectors must count all ballots whether objected to or not, and in a proceeding to obtain a writ of mandamus compelling them so to do the question as to whether the ballots were marked for identification cannot be raised. *People ex rel. Bradley v. Shaw* (1892), 64 Hun, 365, 45 N. Y. St. Rep. 523, 19 N. Y. Supp. 362, aff'd 133 N. Y. 493.

There is nothing for the inspectors to do except to count the ballots in the box. They are prohibited from receiving any having any mark on the outside or not properly indorsed, and if anything appears on the inside of the ballot not authorized by law they must preserve such ballot, then those interested have ample opportunity to deliberately investigate the matter, and after such investigation, if they think proper, present it to the court for its determination. *People ex rel. Bradley v. Shaw* (1892), 64 Hun, 365, 45 N. Y. St. Rep. 523, 19 N. Y. Supp. 362, aff'd 133 N. Y. 493.

Every inspector must sign the certificate containing a statement of canvass required by law. He cannot refuse to do so on the ground that he knows or believes that votes were cast by persons who had no right to cast them. If such persons have taken the required oaths the inspectors must receive the votes, and a mandamus will issue compelling them to sign the returns. *People ex rel. Stapleton v. Bell* (1890), 119 N. Y. 175.

An irregularity on the part of the inspectors in not complying with the law in making and filing their returns cannot be availed of by one who does not show himself to have been injured thereby. *People ex rel. Hatzel v. Board*, 58 How, 141.

The court, in its discretion, may decline to interfere to correct irregularities which do not affect the result of an election. *People ex rel. May v. Strang* (1910), 137 App. Div. 848, 122 N. Y. Supp. 617.

Where the notice of appeal includes a certain ballot as one of those in reference to which the petitioner questions the decision at special term, but his counsel fails to question the decision in his brief, the appellate court will not consider such ballot. *Matter of Brown v. Bd. of Canvassers, Queens Co.* (1915), 170 App. Div. 476, 155 N. Y. Supp. 979; modified 216 N. Y. 732.

A ballot returned as "blank" and subsequently under a writ of mandamus indorsed as "wholly blank," but containing a valid ballot for one candidate, should be counted for him. *People ex rel. Brown v. Bd. of Supra., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

Reversal of orders by Court of Appeals. — Orders, granting writs of mandamus in a proceeding to review an election, which have been affirmed by the Appellate Division and reversed "in whole or in part" by the Court of Appeals, and remitted to the Supreme Court for action, remain unaffected in so far as they command acts lawful within the decision of the Court of Appeals. *People ex rel. Brown v. Bd. of Supra., Suffolk Co.* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205; modified 216 N. Y. 732.

Appeal to Court of Appeals. — An order of the Appellate Division in a proceeding by mandamus for the recount of ballots objected to as marked for identification or rejected as void, and presenting a question of law for review, is appealable as a matter of right to the Court of Appeals as an order finally determining a special proceeding. *People ex rel. Feeny v. Board of Canvassers*



(1898), 136 N. Y. 32, mod'g 23 App. Div. 201, 48 N. Y. Supp. 846; motion for rehearing denied 136 N. Y. 686.

Correction of return of inspectors so as to make a correct return of the ballots counted by them may be compelled by the court irrespective of special provision of Election Law. *People ex rel. Hennessy v. Douglass* (1911), 142 App. Div. 224.

Filing of tally sheets and correction of mistakes therein may be compelled by mandamus. *People ex rel. Hennessy v. Douglass* (1911), 142 App. Div. 224.

Determination of vote on town proposition by inspectors is conclusive, except in so far as review is allowed by statute. *People ex rel. May v. Straug* - (1910), 137 App. Div. 848, 122 N. Y. Supp. 617.

Mandamus must be expressly authorized. — A mandamus to compel a recount of protested ballots may not be maintained by virtue of any inherent powers of the court, but must be expressly authorized by statute. *Matter of Tamney v. Atkins* (July 14, 1913), 209 N. Y. 292, rev'g 161 App. Div. 309.

Review of town election. The amendment of 1899, section 37 of the town law, that "The void and protested ballot and the voted ballots, other than void and protested, shall be preserved and disposed of by the inspectors in the manner provided by section 111 of the Election Law," did not operate to give the right of review under the provision of this section save where the town election is held at the same time as the general election in the fall of the year. *Matter of Baldwin* (1913), 80 Misc. 263.

If the result of the town election has been improperly declared by the town board of canvassers a relator has a remedy by quo warranto proceedings, but not by mandamus under the provisions of this section. *Matter of Baldwin* (1913), 80 Misc. 263.

### § 382. Destruction of books, records and papers relating to the elections.

The officer or board with whom the statement of the result, the returns with tally sheets annexed together with the poll books of the election, the "identification statements for election day," the register of electors and the public copy thereof are filed after an election shall preserve the same for at least two years after the receipt thereof and until all suits or proceedings before any court or judge touching the same shall have been determined. At the expiration of such time such books, records and papers, except a poll book containing signatures of electors, may be destroyed by such officer. This section shall not apply to a city of over one million inhabitants.

Added by L. 1916, ch. 537, in effect May 15, 1916.



## ARTICLE 11.

## VOTING MACHINES.

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## § 390. State voting machine commissioners.

There shall be a state board of voting machine commissioners which shall consist of three commissioners to be appointed by the governor every five years, one of whom shall be an expert in patent law and two of whom shall be mechanical experts. Their successive terms of office shall begin on the first day of January of every fifth year dating from nineteen hundred and three and end on the thirty-first day of December. Any commissioner now in office or hereafter appointed may be removed at the pleasure of the governor, and vacancies shall be filled by the governor for any unexpired term.

No voting machine commissioner shall have any pecuniary interest in any voting machine.

**Derivation:** Election Law, § 160, as added by L. 1899, ch. 466, § 1.

**Consolidators' note.**—Rewritten, but substance unchanged. The original section continued the voting machine commissioners appointed under Laws 1897, chapter 430, until December 31, 1902, and provided for their successors. The new section provides for a series of five year terms, dating from January 1, 1903 (the beginning of the existing tenures), each term ending December 31.

**§ 391. Examination of voting machine.**

Any person or corporation owning or being interested in any voting machine may apply to the state board of voting machine commissioners to examine such machine and report on its accuracy, efficiency and capacity to register the will of voters. The commissioners shall examine the machine and report accordingly. Their report shall be filed in the office of the secretary of state and shall state whether in their opinion the kind of machine so examined can be safely used by such voters at elections, under the conditions prescribed in this article. If the report states that the machine can be so used, it shall be deemed approved by the commissioners and machines of its kind may be adopted for use at elections as herein provided. When the machine has been so approved, any improvement or change that does not impair its accuracy, efficiency or capacity shall not render necessary a re-examination or re-approval thereof. Any form of voting machine not so approved, or which has not been heretofore examined by said commissioners and reported on pursuant to law and its use specifically authorized by law, can not be used at any election. Each commissioner is entitled to one hundred and fifty dollars for his compensation and expenses in making such examination and report, to be paid by the person or corporation applying for such examination.

**Derivation:** Election Law, § 161, as added by L. 1899, ch. 466, § 1, and amended by L. 1901, ch. 530, § 1.

**§ 392. Requirements of voting machine.**

A voting machine approved by the State board of voting machine commissioners must be so constructed as to provide facilities for voting for such candidates as may be nominated. It must also permit an elector to vote for any person for any office, whether or not nominated as a candidate by any party or organization, and must permit voting in absolute secrecy. Such machines shall also be so constructed that an elector can not vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It must also be so constructed as to prevent voting for more than one person for the same office, except where an elector is lawfully entitled to vote for more than one person for that office, and it must afford him an opportunity to vote for as many persons for that office as he is by law entitled to vote for and no more, at the same time preventing his voting for the same person twice. It must be provided with a lock or locks by the use of which, immediately after the polls are closed or the operation of such machine for such election is completed, any movement of the voting or registering mechanism is absolutely prevented. It may also be provided with a separate ballot in each party column or row containing only the words "presidential electors" preceded by the party name, and a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors and shall be counted as such.

**Derivation:** Election Law, § 162, as added by L. 1899, ch. 466, § 1, and amended by L. 1901, ch. 530, § 2.

**Amended by** L. 1911, ch. 642; and L. 1913, ch. 821, in effect Dec. 17, 1913.

**Consolidators' note.**—The provision that a machine "may" be so constructed as to provide facilities for seven different parties is made "must," like the rest of the specifications.

**Use of ballot machines in voting for presidential electors.** Report of Atty.-Gen. (1904), 238.

**Use of voting machines.**—A voting machine to be used at a general election must be so constructed and operated as to accurately take and register the will of the voter and it is the duty of the election officers to see that it is competent for that purpose. Matter of Penner (1912), 77 Misc. 634.

### § 393. Adoption of voting machine.

The board of elections of the city of New York and the common council or other legislative governing body of each other city of the first class shall, and the common council or other legislative governing body of any other city, the town board of any town, or the board of trustees of any village may, adopt for use at elections any kind of voting machine approved by the state board of voting machine commissioners, or the use of which has been specifically authorized by law, and thereupon such voting machine may be used at any or all elections held in such city, town or village, or in any part thereof, for voting, registering and counting votes cast at such elections. Voting machines of different kinds may be adopted for different districts in the same city, town or village. If, prior to the expiration of thirty days after this section as hereby amended takes effect, such board of elections, common council or legislative governing body, as the case may be, of a city of the first class, shall have failed to agree thereon, the secretary of state, within ten days after such thirty days' period, shall adopt a kind or kinds of voting machine for use at elections in such cities, and such board, body or common council shall thereafter provide or continue to provide in the manner prescribed in this article a sufficient number of voting machines so that at the general election in nineteen hundred and twenty one polling places in such cities to the extent of at least twelve per centum shall be equipped therewith. At least thirty-five per centum of the polling places in such cities shall be so equipped with voting machines for use at the general election in nineteen hundred and twenty two. All the remaining polling places in such cities shall be so equipped with voting machines for use at the general election in nineteen hundred and twenty three. The board of elections of the city of New York or the common council or legislative governing body of any other first class city shall determine, on or before the first day of July, the election districts in which such voting machines shall be installed for the years nineteen hundred and twenty one and nineteen hundred and twenty two, but if such board of elections, common council or body are unable to agree upon the districts such determination shall be made by the secretary of state within thirty days thereafter.

**Derivation:** Election Law, § 163, as added by L. 1899, ch. 466, § 1, and amended by L. 1901, ch. 520, § 3.

**Amended by** L. 1921, ch. 291, in effect April 30, 1921.

A purchase of voting machines by a city involves an appropriation of money and must be accomplished in accordance with the provisions of the city charter. The statute expressly authorizes the local authorities of a city to determine whether or not an expenditure for voting machines shall be made and the taxpayers have no voice in the matter. People ex rel. Voting Machine Co. v. City of Geneva (1914), 98 App. Div. 383, 90 N. Y. Supp. 275.

**Provision where machines break during the progress of the election.** Report of Atty.-Gen. (1903), 466.

### § 394. Experimental use of voting machine.

The authorities of a city, town or village authorized by the last section to adopt a voting machine may provide for the experimental use, at an election in one or more districts, of a machine which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted.

**Derivation:** Election Law, § 164, as added by L. 1899, ch. 466, § 1.

**§ 395. Providing machines.**

The local authorities adopting a voting machine shall, as soon as practicable thereafter, provide for each polling place one or more voting machines in complete working order, and shall thereafter preserve and keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in each election district or districts within the city, town or village as the officers adopting the same may direct.

Derivation: Election Law, § 165, as added by L. 1899, ch. 466, § 1.

**§ 396. Payment for machines.**

The local authorities, on the adoption and purchase of a voting machine, may provide for the payment therefor in such manner as they may deem for the best interest of the locality and may for that purpose issue bonds, certificates of indebtedness or other obligations which shall be a charge on the city, town or village. Such bonds, certificates or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par.

Derivation: Election Law, § 166, as added by L. 1899, ch. 466, § 1.

**§ 397. Form of ballots.**

All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party emblem for each political party represented on the machine, which has been duly adopted by such party in accordance with this chapter, and the party name or other designation, and a designating letter and number shall be affixed to the names, or, in case of presidential electors, to the list of candidates of such party. Each party may be further distinguished by a stripe of color below the party emblem, which shall be adopted in the same manner as the party emblem. The order of the lists or names of candidates of the several parties or organizations shall be arranged as provided by this chapter for blanket ballots, except that the titles of offices may be arranged horizontally, with the names of candidates for an office arranged vertically under the title of the office, or the titles of offices may be arranged vertically, with the names of candidates for an office arranged horizontally opposite the title of the office. When a person has been nominated for an office by one political party and has also been nominated for that office by one or more independent bodies, his name shall appear only in the row or column containing generally the names of candidates for other offices nominated by such party, and the name and emblem of such party and of each of such independent bodies shall appear in connection with his name. When the same person has been nominated for the same

office to be filled at the election by more than one party, the voting machine shall be so adjusted that his name shall appear in each row or column containing generally the names of candidates for other offices nominated by any such party; and if such candidate has also been nominated by one or more independent bodies, his name shall appear only in each row or column containing generally the names of candidates for other offices nominated by any such party, and the name and emblem of each of such independent bodies shall appear in one such row or column to be designated by the candidate in writing filed with the officer charged with the duty of providing ballots, or if such person shall fail to so designate, the names and emblems of such independent bodies shall appear in such row or column as such officer shall determine. If any person shall be nominated for any office only by one or more independent bodies, his name shall appear but once upon the machine in the place designated by the officer charged with the duty of providing ballots, and in connection with his name there shall appear the name and emblem of each independent body nominating him. The machine shall be so adjusted that when one or more knobs, equaling the total number of persons to be elected to that office shall have been operated, all other knobs used in connection with that office shall be thereby locked.

Derivation: Election Law, § 167, as added by L. 1899, ch. 466, § 1, and amended by L. 1907, ch. 654, § 1.

Amended by L. 1911, ch. 649; L. 1913, ch. 821; L. 1916, ch. 537; L. 1898, ch. 323; L. 1919, ch. 631; L. 1920, ch. 121; L. 1921, ch. 656, in effect May 4, 1921.

### § 398. Sample ballots.

The officers or board charged with the duty of providing ballots for any polling place shall provide therefor two sample ballots which shall be arranged in the form of a diagram showing such part of the face of the voting machine as shall be in use at that election. Such sample ballots shall be either in full or reduced size and shall contain suitable illustrated directions for voting on the voting machine. Such sample ballots shall be open to public inspection at such polling place during the election day. In all general elections where voting machines are used there may be furnished a sufficient number of such sample ballots of a reduced size, one of which sample ballots may be mailed by the county clerk to each registered voter at least three days before the election or in lieu thereof, a copy of such sample ballot may be published at least once within one week preceding the election in newspapers representing at least two political parties.

Derivation: Election Law, § 168, as added by L. 1899, ch. 466, § 1, and amended by L. 1901, ch. 530, § 4, and L. 1908, ch. 491, § 1.

Amended by L. 1919, ch. 630, in effect May 14, 1919.



Printing of ballots by county clerk where machines are used. Report of Atty.-Gen., (1903) 372.

### § 399. Number of official ballots.

Two sets of ballots shall be provided for each voting machine for each election. Such ballots shall be delivered to the custodian of the voting machine at least ten days before the election.

Derivation: Election Law, § 159, as added by L. 1899, ch. 466, § 1.

Amended by L. 1919, ch. 630, in effect May 14, 1919.

### § 400. Preparation of voting machine for election.

The board of elections for each county and the city of New York in which voting machines are to be used, shall cause the proper ballot labels to be placed on the machines corresponding with the sample ballots herein provided for, and the machine in every way put in order, set, and arranged, ready for use in voting at such election; and for the purpose of so labeling, putting in order, setting and arranging the machine, shall employ one or more competent persons who shall be known as the voting machine custodian, or custodians, who shall be sworn to perform their duties honestly and faithfully, and for such purpose shall be considered as officers of election, and shall be paid for the time spent in the discharge of their duties, in the same manner as election officers are paid. In cities where there are more than twenty voting machines, more than one custodian shall be appointed. They shall be selected from the two political parties entitled to representation on a board of election officers. No custodian shall be appointed or serve unless he shall be fully qualified to perform his duties in connection with the complete preparation of the machine for the election and the instructing of the election officers and voters. Said custodian or custodians, shall, under the direction of said board or officer having charge and control of the election, cause the machine to be so labeled, put in order, set, arranged, and delivered to the polling place of the election district in which the election is to be held, together with all furniture and appliances necessary for the proper conducting of the election, at least one hour before the time set for opening the polls on election day. In preparing a voting machine for an election the custodian shall, according to the printed directions furnished, ar-



range the machine and the ballots therefor so that it will in every particular meet the requirements for voting and counting at such election, and thoroughly test the same. Before preparing the voting machine for any election written notice shall be mailed to the chairman of the city, or town committee of at least three of the principal parties, stating the time and place where machines will be prepared, at which time one representative of each of such political parties shall be afforded an opportunity to see that the machines are in proper condition for use in the election; such representatives shall be sworn to faithfully perform their duties and shall be regarded as election officials but shall not interfere with the custodians or assume any of their duties. When a machine has been so examined by such representatives it shall be sealed with a numbered metal seal. Such representatives shall certify: to the number of the machine; if all of the counters are set at 000; and the number registered on the protective counter, if one is provided, and on the seal. After the preparation of the machines, an officer or officers or some one duly authorized, other than the person who has prepared them for the election, shall inspect each machine, and report in writing if all of the registering counters are set at zero (000), and the machine is arranged in all respects in good order for the election and locked, with the number registered on the protective counter, if one is provided; and with the number on the seal. When a voting machine has been properly prepared for election, it shall be locked against voting, and sealed; and the keys thereof shall be delivered to the board or official having charge and control of elections, together with a written report made by the custodian on blanks furnished to him, stating that it is in every way properly prepared for the election. All voting machines shall be transferred to the polling places in charge of an authorized official, who shall certify to their delivery in good order. After the machine has been delivered and set up ready for use in the election at the polling place, it shall be the duty of the local authorities to provide ample protection against molestation or injury to the machine. Every voting machine shall be furnished with a lantern, or a proper substitute for one, which shall give sufficient light to enable electors while in the booth to read the ballot labels and suitable

for use by the election officers in examining the counters. The lantern shall be prepared in good order for use before the opening of the polls. All voting machines used in any election shall be provided with a screen, hood, or curtain which shall be so made and adjusted as to completely conceal the elector and his actions while voting.

*Derivation:* Election Law, § 169-a, as added by L. 1908, ch. 491, § 2.

*Amended by* L. 1911, ch. 649; L. 1919, ch. 630, in effect May 14, 1919.

*Appointing of voting machine custodians.* Rept. of Atty.-Gen., (1908) 541.

*The duties of a custodian and of an inspector of election are conflicting and cannot be performed by the same person.* Rept. of Atty.-Gen., (1908) 545.

### § 401. Instruction of election officers.

Not later than ten days before each general election, the custodian, or custodians, of the machine shall instruct each board of inspectors that is to serve in an election district in the use of the machine, and in the duties of inspectors of election in connection therewith; and he shall give to each inspector of election that has received such instruction and is fully qualified to properly conduct the election with the machine, a certificate to that effect. For the purpose of giving such instruction the custodian shall call such meeting, or meetings, of the inspectors of election as shall be necessary. Such custodian shall without delay file a report with the board or official in charge of elections, stating that he has instructed the election officers, giving the names of such officers, and the time and place where such instruction was given. The inspectors of election of each election district in which a voting machine is to be used, shall attend such meeting, or meetings, as shall be called, for the purpose of receiving such instructions, concerning their duties as shall be necessary for the proper conduct of the election with the machine. Each inspector of election that shall qualify for and serve in the election, shall be paid one dollar for the time spent in receiving such instruction, in the same manner and at the same time as he is paid for his services on election day. No inspector of election shall serve in any election at which a voting machine is used, unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine, and has received a certificate to that effect from the custodian of the machines; provided, however, that this shall

not prevent the appointment of an inspector of election to fill a vacancy in an emergency.

Derivation: Election Law, § 169-b, as added by L. 1908, ch. 491, § 2.

Amended by L. 1911, ch. 649; L. 1919, ch. 630, in effect May 14, 1919.

#### § 402. Instruction of voters before election.

In all places where voting machines are to be used one or more of such machines which shall contain the ballot labels, showing the party emblems and title of offices to be voted for, and which shall so far as practicable contain the names of the candidates to be voted for, shall be placed on public exhibition in some suitable place, in charge of a competent instructor, for at least three days during the thirty days next preceding the election; but no voting machine which is to be assigned for use in an election shall be used for such instruction after having been prepared and sealed for the election. During public exhibitions of any voting machine for the instruction of voters previous to an election, the counting mechanism thereof shall be concealed from view and the doors may be temporarily opened only when authorized by the board or official having charge and control of the elections. Printed instructions how to vote circulated to voters must conform to the instructions approved by the officials providing ballots, and adapted to the machine used.

Derivation: Election Law, § 169-c, as added by L. 1908, ch. 491, § 2.

Amended by L. 1913, ch. 630, in effect May 14, 1919.

Use of voting machine for instruction within hall or room where official machine is being used should not be permitted. Report of Atty.-Gen. (1911), vol. 2, p. 211.

#### § 403. Independent nominations.

(Repealed by L. 1913, ch. 621, in effect Dec. 17, 1913.)

#### § 404. Distribution of ballots and stationery.

The ballots and stationery shall be delivered to the board of inspectors of each election district before ten o'clock in the forenoon of the day next preceding the election.

Derivation: Election Law, § 170, as added by L. 1899, ch. 466, § 1

#### § 405. Statements of canvass.

In each election district where voting machines are used, statements of canvass shall be printed to conform with the type of

voting machine used, of a form approved by the secretary of state. The designating number and letter on the counter for each candidate shall be printed next to the candidate's name on the statements of canvass. Three such statements shall be used in each such election district. No tally sheets shall be provided or used in any such district.

Derivation: Election Law, § 171, as added by L. 1899, ch. 466, § 1, and amended by L. 1908, ch. 491, § 3.

Amended by L. 1918, ch. 323, in effect Apr. 24, 1918.

### § 406. Unofficial ballots.

If the official ballots for an election district at which a voting machine is to be used, required to be furnished by or to any town, or city clerk, or board, shall not be delivered at the time required, or if after delivery shall be lost, destroyed or stolen, the clerk of such town or city, or such board, or the election inspectors of such district, shall cause other ballots to be prepared, printed or written, as nearly in the form of the official ballots as practicable, and the inspectors shall cause the ballots so substituted to be used at the election in the same manner, as near as may be, as the official ballots. Such ballots so substituted shall be known as unofficial ballots.

Derivation: Election Law, § 172, as added by L. 1899, ch. 466, § 1.

### § 406-a. If voting machine shall become out of order.

If any voting machine being used in any election shall become out of order during such election, it shall if possible be repaired or another machine substituted as promptly as possible, but in case such repair or substitution cannot be made, paper ballots, printed or written, and of any suitable form, may be used for the taking of votes, and for such purpose the reduced sample ballots referred to in section three hundred and ninety-eight may be employed.

Added by L. 1919, ch. 630, in effect May 14, 1919.

### § 407. Opening of polls.

The inspectors of election and poll clerks of each district shall meet at the polling place therein, at least three-quarters of an hour before the time set for the opening of the polls at each election, and shall proceed to arrange within the guard-rail the furniture,

stationery and voting machine for the conduct of the election. The inspectors of election shall then and there have the voting machine, ballots and stationery required to be delivered to them for such election: and if it be an election at which registered voters only can vote, the registry of such voters required to be made and kept therefor. The inspectors shall thereupon cause at least two instruction cards, and if printed in different languages, at least two of each language, to be posted conspicuously within the polling place. If not previously done, they shall insert in their proper place on the voting machine, the ballots containing the names of offices to be filled at such election, and the names of candidates nominated therefor. The keys to the voting machine shall be delivered to the election officers at least three-quarters of an hour before the time set for opening the polls, in a sealed envelope, on which shall be written or printed the number and location of the voting machine: the number on the seal; and, if provided with a protective counter, the number registered on such counter, as reported by the custodian. The envelope containing the keys shall not be opened until at least one inspector from each of two political parties shall be present at the polling place and shall have examined the envelope to see that it has not been opened. Before opening the envelope all election officers present shall examine the number on the seal on the machine, also the number registered on the protective counter, if one is provided, and shall see if they are the same as the numbers written on the envelope containing the keys: If found not to agree, the envelope must not be opened until the custodian, or other authorized person, shall have been notified and shall have presented himself at the polling place for the purpose of re-examining such machine and shall certify that it is properly arranged. If the numbers on the seal and protective counter, if one is provided, are found to agree with the numbers on the envelope the inspectors shall proceed to open the doors concealing the counters. Before the polls are open for election, each inspector shall carefully examine every counter and see that it registers zero, and the same shall be subject to the inspection of the official watchers. The machine shall remain locked against voting until the polls are formally opened and shall not be operated except by voters in voting. If any



counter is found not to register zero (000), the inspectors of election shall immediately notify the custodian, who shall if practicable adjust the counters at zero, (000), but if it shall be impracticable for the custodian to arrive in time to so adjust such counters before the time set for opening the polls, the inspectors shall immediately make a written statement of the designating letter and number of such counter, together with the number registered thereon, and shall sign and post same upon the wall of the polling room, where it shall remain throughout election day, and in filling out the statement of canvass, they shall subtract such number from the number then registered thereon.

**Derivation:** Election Law, pt. of § 173, as added by L. 1899, ch. 466, § 1, and amended by L. 1901, ch. 530, § 5, and L. 1903, ch. 491, § 4.

**Amended** by L. 1919, ch. 630, in effect May 14, 1919.

### § 408. Independent ballots.

Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office, are herein referred to as irregular ballots. Where two or more persons are to be elected to the same office, and each candidate's name is placed upon or adjacent to a separate key or device, and the machine requires that all irregular ballots voted for that office be deposited, written or affixed in or upon a single receptacle or device, a voter may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear.

In voting for presidential electors, a voter may vote an irregular ticket made up of the names of persons in nomination by different parties, or partially of names of persons so in nomination and partially of names of persons not in nomination, or wholly of names of persons not in nomination by any party. Such irregular ballot shall be deposited, written or affixed in or upon the receptacle or device provided on the machine for that purpose.

With these exceptions, no irregular ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any irregular ballot so voted shall not be counted. An irregular ballot must be cast in its appropriate place on the machine, or it shall be void and not counted.

**Derivation:** Election Law, pt. of § 173, as added by L. 1899, ch. 466, § 1, and amended by L. 1901, ch. 530, § 5, and L. 1903, ch. 491, § 4.

**§ 409. Location of machines; guard-rail.**

The exterior of the voting machine and every part of the polling place shall be in plain view of the election officers and watchers. The voting machine shall be placed at least four feet from the poll clerk's table. A guard-rail shall be constructed at least three feet from the machine, with openings to admit voters to and from the machine. The voting machine shall be so located in the polling place that, unless its construction requires otherwise, the ballot labels on the face of the machine can be plainly seen by the election officers and the party watchers when not in use by voters. The election officers shall not themselves be, or permit any other person to be, in any position or near any position, that will permit one to see or ascertain how a voter votes, or how he has voted. The election officer attending the machine shall inspect the face of the machine after each voter has cast his vote, to see that the ballot labels are in their proper places and that the machine has not been injured. During elections the door or other covering of the counter compartment of the machine shall not be unlocked or opened or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the election officers and shall be sent with the returns.

*Derivation:* Election Law, § 174, as added by L. 1899, ch. 466, § 1, and amended by L. 1908, ch. 491, § 5

**§ 410. Manner of voting.**

After the opening of the polls, the inspectors shall not allow any voter to pass within the guard-rail until they have ascertained that he is duly entitled to vote. Only one voter at a time shall be permitted to pass within the guard-rail to vote. The operating of the voting machine by the voter while voting shall be secret and obscured from all other persons except as provided by this chapter in cases of voting by assisted voters. No voter shall remain within the voting machine booth longer than three minutes and if he shall refuse to leave it after the lapse of three minutes, he shall be removed by the inspectors.

*Derivation:* Election Law, § 175, as added by L. 1899, ch. 466, § 1.

*Amended by* L. 1913, ch. 821, in effect Dec. 17, 1913

**§ 411. Instructing voters.**

For the instructing of voters there shall, so far as practicable,

be provided for each polling place a mechanically operated model of a portion of the face of the machine. Such model, if furnished, shall, during the election, be located on the inspector's table or in some other place which the voters must pass to reach the machine, and each voter shall, before entering the machine, be instructed regarding its operation and such instruction illustrated on the model, and the voter given opportunity to personally operate the model. The voter's attention shall also be called to the diagram of the face of the machine so that the voter can become familiar with the location of the questions and the names of the offices and candidates. In case any voter after entering the voting machine booth, and before the closing of such booth, shall ask for further instructions concerning the manner of voting, two inspectors of opposite political parties shall give such instructions to him; but no inspector or other election officer or person assisting a voter shall in any manner request, suggest or seek to persuade or induce any such voter to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question or proposition. After giving such instructions, the inspectors shall retire and such voter shall then close the booth and vote as in the case of an unassisted voter.

*Derivation:* Election Law, § 176, as added by L. 1899, ch. 466, § 1.

*Amended by* L. 1916, ch. 537; L. 1919, ch. 630, in effect May 14, 1919.

#### § 412. Illiterate or disabled voters.

The provisions of sections one hundred and sixty-four and three hundred and fifty-seven of this chapter, shall apply also when ballot machines are used, and the word "booth" when used in such sections, shall be interpreted to include the ballot machine inclosure or curtain.

*Derivation:* Election Law, § 177, as added by L. 1899, ch. 466, § 1.

#### § 413. Canvass of vote and proclamation of result.

There shall be printed directions in the statement of canvass to the election officers for their guidance before the polls are opened and when the polls are closed; a certificate of which shall

be signed by the election officers before the polls are opened, showing the delivery of the keys in a sealed envelope; the number on the seal; the number registered on the protective counter, if one is provided; if all of the counters are set at zero (000); if the public counter is set at zero (000); if the ballot labels are properly placed in the machine. Also a certificate which shall be filled out after the polls have been closed, that the machine has been locked against voting and sealed; the number of electors as shown on the public counters; the number on the seal; the number registered on the protective counter, if one is provided; and that the voting machine is closed and locked. The return and statement of canvass shall show the total number of votes cast for each office, the number of votes cast for each candidate, as shown on his counter, and the number of votes for persons not nominated, which shall be certified by the board of inspectors. As soon as the polls of the election are closed, the inspectors of election thereat shall immediately lock the voting machine against voting and open the counting departments in the presence of the watchers and all other persons who may be lawfully within the polling place, giving full view of all the counter numbers. The chairman of the board of inspectors shall, under the scrutiny of an inspector of a different political party, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the designating number and letter on each counter for each candidate's name, the result as shown by the counter numbers, and shall then read the votes recorded for each office on the irregular ballots. He shall also in the same manner announce the vote on each constitutional amendment, proposition or other question. The counter shall not in the case of presidential electors be read consecutively along the party row or column, but shall always be read along the office columns or rows, completing the canvass for each office. The vote as registered shall be entered on the statements of canvass in ink, by the poll clerks and an inspector of opposite political faith from the chairman in the same order on the space which has the same designating number and letter, after which the figures shall be verified by being called off in the same manner from the counters of the machine by an inspector of a different political party. The counter compartment of the voting machine shall remain open until the official returns and all other reports have been fully completed and verified by the election board. During such time any candidate, watcher, or challenger of any party or independent body duly accredited as provided by section three hundred and fifty-two of the election law who may desire to be present shall be admitted to the polling place. The proclamation of the result of the votes cast shall be

deliberately announced in a distinct voice by the chairman of the board of inspectors who shall read the name of each candidate, with the designating number and letter of his counter, and the vote registered on such counter; also the vote cast for and against each question submitted. During such proclamation ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine and any necessary corrections shall then and there be made by the election board, after which the doors of the voting machine shall be closed and locked.

Before adjourning the board shall, with the seal provided therefor, so seal the operating lever of the machine that the voting and counting mechanism will be prevented from operation.

Derivation: Election Law, § 178, as added by L. 1899, ch. 466, § 1 and amended by L. 1907, ch. 634, § 2, and L. 1908, ch. 491, § 6.

Amended by L. 1909, ch. 240; L. 1911, ch. 649, and L. 1913, ch. 821, L. 1918, ch. 323, in effect Apr. 24, 1918.

**Constitutionality in use of defective voting machines.**—When the elector in the use of the voting machine complies with the prescribed regulations for its use so as to indicate his choice for any particular office, the vote, so far as he is concerned, is complete. The registry by the machine is simply a substitute for the canvass of written votes. That it failed to work properly cannot destroy the effect of the act of the elector in the exercise of his constitutional right. *People ex rel. Deister v. Wintermute*, (1909) 194 N. Y. 99, rev'g 127 App. Div. 933.

While the use of voting machines may make it more difficult to ascertain the true vote when the machine works defectively than in cases where paper ballots are used and the ballots are preserved, the use of such machine does not necessarily impair the constitutional rights of the elector. *People ex rel. Deister v. Wintermute* (1909) 194 N. Y. 99 rev'g 127 App. Div. 933.

Where it is not claimed that a voting machine recorded votes in excess of those cast, but that it failed to record votes which were cast, the record as returned by the machine should be taken as the starting point of the inquiry, and such record can be verified only by competent legal proof that voters did vote for their candidate to a number in excess of those registered by the machine. *People ex rel. Deister v. Wintermute*, (1909) 194 N. Y. 99, rev'g 127 App. Div. 933.

Objections if substantial, that the use of a voting machine violates the requirement of the Constitution, should be determined in a direct proceeding by mandamus, or otherwise, to compel the rejection of the machine and the use of paper ballots, in which the subject can be fully investigated and the question fairly determined. *People ex rel. Deister v. Wintermute*, (1909) 194 N. Y. 99, rev'g 127 App. Div. 933.

Use of voting machine as violation of constitutional requirement that all elections shall be by ballot. See note, 7 L. R. A. (N. S.) 61.

Testimony of electors, when admissible to show how they voted. Evidence that a certain number of electors exceeding in number the votes canvassed for a candidate pulled down the lever over the Democratic column containing his name does not impede the return of the board of canvassers, for they are not called upon to determine whether the voting machine worked correctly or to correct any error if one was made. Such evidence, however, is admissible to show that by reason of the failure of the machine to carry out and express the intent of the voters, owing to defects there was not a fair and complete expression of the popular will at the election. *People ex rel. Deister v. Wintermute*, (1909) 127 App. Div. 93, 104 N. Y. Supp. 107.

#### § 414. Disposition of irregular ballots; and preserving the record of the machine.

The inspectors of election shall, as soon as the count is completed and fully ascertained as in this chapter required, lock the machine



against voting, and it shall remain so for the period of thirty days and as much longer as may be necessary or advisable because of any existing or threatened contest over the result of such election, except as provided by section four hundred and sixteen of this chapter and except that it may be opened and all the data and figures therein examined upon the order of any court of competent jurisdiction or may be opened by direction of a committee of the senate or assembly to investigate and report upon contested elections of members of the legislature voted for by the use of such machine and such data and such figures examined by such committee in the presence of the officer having the custody of such machine. Any candidate shall be entitled on application to the supreme court and on reasonable grounds shown to have any machine in or upon which he was named as a candidate opened and all the data and figures therein examined by him or his authorized agents, but the court shall prescribe such conditions as of notice to other candidates or otherwise as it shall deem necessary and proper. Whenever irregular ballots have been voted, the inspectors shall return all of such ballots in a properly secured sealed package indorsed "irregular ballots," and file such package with the original statement of canvass. It shall be preserved for six months after such election, and may be opened and its contents examined only upon order of the supreme court or a justice thereof, or a county judge of such county, or by direction of such a committee of the senate and assembly if the ballots relate to the election under investigation by such committee, and at the expiration of such time, such ballots may be disposed of in the discretion of the officer or board having charge of them.

**Derivation:** Election Law, § 179, as added by L. 1899, ch. 466, § 1, and  
**Amended by** L. 1916, ch. 537; L. 1919, ch. 630, in effect May 14, 1919.

**§ 415. Disposition of keys; opening counter compartment.**

The keys of the machine shall be enclosed in an envelope which



shall be supplied by the officials, on which shall be written the number of the machine and the district and ward where it has been used, which shall be securely sealed and indorsed by the election officers, and shall be so returned to the officer from whom they were received. The number on the seal and the number registered on the protective counter, if so provided, shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by the officials having them in charge. A public officer who, by any provision of law, is entitled to the custody of a machine for any period of time, shall be entitled to the keys therefor while such machine is in his charge. It shall be unlawful for any unauthorized person to have in his possession any key or keys of any voting machine; and all election officers, or persons entrusted with such keys for election purposes, or in the preparation of the machine therefor, shall not retain them longer than necessary to use them for such legal purpose. All machines shall be boxed and collected as soon after the close of the election as possible, and the machines, and the boxes for the machines, shall at all times be stored in a suitable place.

Derivation: Election Law, § 179-a, as added by L. 1908, ch. 491, § 2.

Amended by L. 1909, ch. 465; L. 1916, ch. 537, in effect May 15, 1916.

#### § 416. Provision for re-canvass of vote

Whenever it shall appear that there is a discrepancy in the returns of any election district, the county board of canvassers shall summon the inspectors of election thereof and said inspectors shall, in the presence of said board of canvassers, or a bi-partisan committee thereof, make a record of the number on the seal and the number on the protective counter, if one is provided, open the counter compartment of said machine, and without unlocking said machine against voting, shall re-canvass the vote cast thereon. Before making such re-canvass the county board of canvassers shall

give notice in writing to the custodian and to the county chairman of each political party or nominating body that shall have nominated candidates for the election, of the time and place where said re-canvass is to be made; and each of such political parties or nominating bodies may send two representatives to be present at such re-canvass. If, upon such re-canvass, it shall be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the county board of canvassers, or said committee thereof, with the assistance of the custodian of said machine, shall, in the presence of the inspectors of election and the authorized representatives of the several said political parties or nominating bodies, unlock the voting and counting mechanism of said machine and shall proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from said machine. Before testing the counters they shall be reset at zero (000) after which each counter shall be operated at least one hundred times. After the completion of said examination and test, the custodian shall then and there prepare a statement in writing giving in detail the result thereof, and said statement shall be witnessed by the persons present and shall be filed with the secretary of the county board of canvassers. But nothing contained in this section shall authorize any change in the returns filed by inspectors of election in any election district nor authorize any board of canvassers in any wise to consider or act upon any re-canvass of votes made pursuant thereto.

Derivation: Election Law, § 179 b, as added by L. 1908, ch. 491, § 2.

Amended by L. 1916, ch. 537, in effect May 15, 1916.

When mandamus will issue directing correction of returns and recanvass. A mistake by the inspectors of election in reading the vote for mayor as shown on a voting machine was discovered after the machine had been locked and the official returns sealed, but before the inspectors of election had filed

their return with the commissioners of election. The inspectors decided that they could lawfully make no change in the return, but explained their mistake to the commissioners. They also failed as required by section 413 to certify the total number of votes as shown on the public counter of the voting machine. If this had been done, it would have appeared that their return, as filed, showed more votes for the candidates for mayor than voters. No discrepancy being shown on the face of the return the county board of canvassers did not order a canvass of the vote. This section contains provisions for a canvass of the vote on election machines under the direction of the county board of canvassers whenever it shall appear that there is a discrepancy in the returns of any election district. In this case if the inspectors had done their duty and certified the total number of votes as shown on the public counter of the machine, a discrepancy in the returns would have appeared and they may be required by mandamus to make a correct return. *Matter of Smith v. Wesel* (1915), 216 N. Y. 421.

**Faulty adjustment of voting machine.** - Where one was both the Republican and the Prohibition candidate for the office of governor, and solely because of the faulty adjustment of the voting machine an elector voted twice for a candidate for governor, once in the Republican row and once in the Prohibition row, his vote should not be thrown out, but should be recorded and canvassed as one vote for governor, and the court has inherent power to direct that this be done and a peremptory writ of mandamus will issue directing the board of canvassers in making and completing their canvass of the votes cast in said election district to state, declare, certify and canvass the votes cast therein for the office of governor, as indicated in the opinion of the court herein. *Matter of Rattigan v. Searing* (1918), 105 Misc. 155, 172 N. Y. Supp. 804.

#### § 417. Application of other articles and penal law.

The provisions of the other articles of this chapter apply as far as practicable to voting by voting machines, except as herein provided. The provisions of the penal law and of this chapter relating to misconduct at elections shall apply to elections with voting machines. Any person who shall before or during an election tamper with any voting machine; or who shall interfere or attempt to interfere with the correct operation of the voting machine, or the secrecy of voting; or shall wilfully injure a voting machine to prevent its use; or, any election or police officer or anyone employed to assist in the care or arrangement of the voting machine, who shall permit any person to violate the secrecy of the voting, or to interfere in any way with the correct operation of the voting machine; or any unauthorized person who shall make or have in his possession a key to a voting machine that has been adopted and will be used in elections in this state shall be guilty of a felony, punishable by imprisonment in a state prison for not less than one year nor more than five years.

**Derivation:** Election Law, § 180, as added by L. 1899, ch. 466, § 1, and amended by L. 1908, ch. 491, § 9.

**Examination of voting machines.**—The provisions of this section are not broad enough to warrant the granting of an order for the examination of voting machines analogous to an order for the examination of ballot boxes under § 374. *Matter of Thomas* (1915), 216 N. Y. 426; see 92 Misc. 483, 156 N. Y. Supp. 43.

**§ 418. When poll clerks, ballot clerks, general clerks and canvassing inspectors not to be elected.**

In any election district of any city, town or village for which a voting machine shall have been adopted, and which will be supplied and ready for use at the next election to be held therein, no poll clerks, ballot clerks or general clerks, and no additional inspectors known as canvassing inspectors, shall be appointed, or elected.

**Derivation:** Election Law, § 181, as added by L. 1899, ch. 466, § 1.

**Amended by** L. 1919, ch. 504; L. 1920, ch. 882; L. 1921, ch. 390, in effect April 30, 1921.

**§ 419. Number of voters in election districts.**

For any election in any city, town or village in which voting machines are to be used, the election districts in which such machines are to be used may be created by the officers charged with the duty of creating election districts, so as to contain as near as may be in districts in which one such machine is used, six hundred voters each, and in districts in which two or more such machines are used, nine hundred voters each. Such redistricting or redivision may be made at any time after any November election and on or before August fifteenth following, to take effect on the sixth Wednesday before the next general election. Where such redistricting or redivision shall be made in any town, the board making the same shall, on or before September first following, appoint from the inspectors of election then in office (if sufficient therefor are then in office, and, if not, from persons not in office, sufficient to make up the requisite number), to take effect on or before the first day of registration thereafter and not earlier than the sixth Wednesday preceding the next general election, four inspectors of

election for each election district thus created, who shall be equally divided between the two parties entitled to representation on said boards of inspectors. Thereafter no redivision of such election district shall be made for elections by such machines until at some general election the number of votes cast in one or more of such districts in which such machine is used shall exceed six hundred and fifty, or in which two or more such machines are used shall exceed one thousand. But the town board of a town in which such machines are used may alter the boundaries of the election districts at any time after a general election and on or before August fifteenth following, to take effect on the sixth Wednesday before the next general election, provided that the number of such election districts in such town shall not be increased or reduced, and the number of votes to be cast in any district whose boundaries are so altered shall not exceed six hundred and fifty in a district in which one machine is used, or one thousand in a district in which two or more machines are used.

If the creation, division or alteration of an election district is rendered necessary by the creation, division or alteration of a town, ward or city or rendered necessary or occasioned by the division of a county into assembly districts after a reapportionment by the legislature of members of assembly, such creation, division or alteration of an election district shall be made and shall take effect immediately; and inspectors of election for the new election districts, as so created, divided or altered, shall be appointed, in the manner provided by law, a reasonable time before the next official primary or meeting for registration and such appointments shall take effect immediately.

**Derivation:** Election Law, § 182, as added by L. 1899, ch. 466, § 1, and amended by L. 1901, ch. 530, § 7, and L. 1903, ch. 122, § 1.

**Amended by** L. 1911, ch. 542; L. 1914, ch. 244; L. 1916, ch. 537; L. 1918, ch. 323, in effect Apr. 24, 1918.



**Consolidators' note.**— The provision that after a redistricting of election districts in a town two of the inspectors of election "shall belong to and be of the same political faith and opinion on state and national issues as one of the two political parties which at the last preceding general election for state officers shall have cast the greatest number of votes in said town, and the other two "inspectors" shall belong to and be of the same political faith and opinion on state and national issues as the other of said two political parties," is omitted as unconstitutional.

The constitutional requirement (art. 2, § 6) is that "all laws creating, regulating or affecting boards of officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes." The provision in question seems to violate this constitutional requirement in that it adopts the vote in the town rather than in the state as the test. The Constitution, it should be noted, lays down no rule for determining how the highest and next highest number of votes are to be determined—whether the vote upon a single office shall be taken as the basis of comparison between all parties, and if so, what office, or whether the vote for the candidate who polls the greatest vote shall be deemed the vote of the party, or whether only straight ballots shall be included in estimating the number, or whether some split ballots shall be included and some excluded, or how it is to be determined whether any given vote is cast by the "political party." It is obvious that the vote for any given candidate cannot be an exact measure of a party vote, nor can the vote on any particular office be an exact measure, though in default of any better measure it is conceivable that either might, for practical purposes, be adopted as such. But whatever the measure, and however the number of votes cast by any given "political party" is to be determined, the Constitution would seem to require, *ex terminorum*, that every vote cast by the party anywhere throughout the state be counted, in deciding whether its vote was either the highest or the next highest. Suppose in any election the vote in the whole state was in this order, parties A, B and C, but in any given town using voting machines and redistricted under the section under review the party vote stood A, C, B; the Constitution would seem to divide the inspectorships between A and B; this section says they must go to A and C.

In place of this provision, accordingly, the expression used in the earlier section (Election Law, § 13, new § 312) is resorted to, and it is here provided

that the inspectors "shall be equally divided between the two parties entitled to representation on said boards of inspectors."

It may be added that the statute as it stands is inconsistent with the provision relating to the qualification of election inspectors generally (Election Law, § 11, subd. 1, new § 362), which provides for election officers "in every election district of this state" and substantially follows the language of the constitutional provision already quoted, omitting, like it, any provision as to how the "highest and next highest number of votes" are to be determined, but making, like it, the vote in the state the test. It is also inconsistent with the general provision relating to inspectors in towns (Election Law, § 13 new § 312), which provides that appointments are to be made from the nominees of "the two political parties entitled to representation on a board of election officers," and which thus refers by inference to the general requirements of the Constitution and of section 11, subdivision 1, and adopts the same test, *i. e.*, the vote in the state. Why the Legislature adopted a basis of selection for towns which use voting machines different from that adopted for other towns, or adopted a different basis in the same town *before* and *after* redistricting (which is what the old section does) does not appear.

The statutory provisions referred to may be read in connection with the definition of a party as found in Election Law, § 32 (Primary Election Law, § 3, subd. 4), and Election Law, § 120 (Election Law, old § 56), and with new sections 48, 49, 52, 60, 72 and 73 (Primary Election Law, § 4 subds. 3 and 4, § 5, subd. 1, §§ 10, 13 and 14 respectively), and new sections 130, 194, 196, 295, 301, 303 (Election Law, §§ 61, 11, subd. 2, par. d and e, §§ 7, 10, 12, respectively), and new section 473 (Metropolitan Elections District Law, § 4), and new section 509 (Soldiers' and Sailors' Election Law, § 10). In the definition of a party and in several of the other sections just cited, the vote for governor is adopted as the test, but, with one exception, the provisions based thereon do not relate to officers in charge of registration, the polls and the canvass (the extent of the constitutional requirement). The exception referred to is in Primary Election Law, § 5, subd. 1 (new § 32), as to which it is to be said that if it is to be construed not as containing a misdescription of the election officers, but as adding something to the Election Law and as requiring the election officers to represent the two parties who cast the largest and next largest votes for governor in the last preceding gubernatorial election, it would seem to be inconsistent with the constitutional requirement that the vote at the last preceding general election shall be taken.

## § 420. Definitions.

The list of candidates need or to be used on the front of the voting machine shall be deemed official ballots under this chapter for an election district in which a voting machine is used pursuant to law. The word "ballot" as used in this article, (except when reference is made to irregular ballots) means that portion of the cardboard or paper or other material within the ballot frames containing the name of the candidate and the emblem of the party organization by which he was nominated, or a statement of a proposed constitutional amendment, or other question or proposition with the word "Yes" for voting for any question or the word "No" for voting against any question. The term "question" shall mean any constitutional amendment, proposition, or other question, submitted to the voters at any election. The term "ballot label" shall mean the printed strips of cardboard containing the names of the candidates nominated, and the questions submitted. The term "irregular ballot" shall mean a vote cast, by or on a special device, for a person whose name does not appear on the ballot labels. The term "voting machine custodian" shall mean the person who shall have charge of

preparing and arranging the voting machines for elections. The term "protective counter" shall mean a separate counter built into the voting machine which cannot be reset, which records the total number of movements of the operating lever.

**Derivation:** Election Law, § 183, as added by L. 1899, ch. 466, § 1, and amended by L. 1908, ch. 491, § 2.

**Amended by** L. 1913, ch. 821, in effect Dec. 17, 1913.

The fact that voting machines used at an election held to determine a question submitted had upon them the words "Yes" and "No" instead of the words "For" and "Against" does not render invalid the votes registered by such voting machines, where there is no pretense that any elector was thereby deceived. *People ex rel. Williams v. Board of Canvassers* (1905), 105 App. Div. 197, 94 N. Y. Supp. 996, *aff'd* 183 N. Y. 538.

### § 421. Saving clause.

Nothing herein shall be deemed to prohibit the adoption or use of any voting machine at any election within any town, city or village that has adopted the same prior to the tenth day of December, nineteen hundred and thirteen, if the mechanism is or may be made adjustable to conform to the grouping of candidates under the title of the office, but the method of conducting an election therewith shall be in the manner prescribed by this chapter.

**Derivation:** Election Law, pt. of § 184, as added by L. 1899, ch. 466, § 1.

**Amended by** L. 1913, ch. 821, in effect Dec. 17, 1913.

## ARTICLE 12.

## BOARDS OF CANVASSERS.

**Section 430. Organization of county board of canvassers.**

- 431. Production of returns and tally sheets.
- 432. Correction of clerical errors in election district statements.
- 433. Mandamus to county or state boards of canvassers to correct errors.
- 434. Proceedings of state board of canvassers upon corrected statements of county boards.
- 435. Mandamus to state board to canvass corrected statements of county boards.
- 436. Proceedings upon corrected statements.
- 437. Statements of canvass by county boards; preservation of protested, void and wholly blank ballots.
- 438. Decisions of county boards as to persons elected.
- 439. Transmission of statements of county boards to secretary of state and board of elections.
- 440. Organization and duties of board of canvassers of the city of New York.
- 440a. City boards of canvassers.
- 441. Organization of state board of canvassers.
- 442. Canvass by state board.
- 443. Certificates of election.
- 444. Record in office of secretary of state of county officers elected.

**§ 430. Organization of county board of canvassers.**

The board of supervisors of each county shall be the county board of canvassers of such county. The county board of canvassers of each county within the city of New York shall consist of the members of the board of aldermen of the city of New York elected as such within the county. The said county boards of canvassers shall also within their respective counties be the city board of canvassers of such city. The county board of canvassers of a county containing a city or cities shall be the city board of canvassers of such city or cities, except that the board of aldermen of the city of Buffalo shall be the city board of canvassers for such city. The county board of canvassers of the respective counties shall meet on the Tuesday next after each election of public officers held in such county other than an election of town, city, village or district school officers held at a different time from a general election. The board of county canvassers shall meet at the usual place of meeting of the board of supervisors, except that in a county wholly included in the city of New York such board of county canvassers shall meet at the office of the county clerk. Upon such meeting they shall choose one of their number chairman of such board. In a county having a single commissioner of elections, instead of a board of elections, such commissioner shall be the secretary of the board of county canvassers. In a county wholly included within the limits of the city of New York and in a county, if any, in which the general powers and duties of a county board of elections is devolved upon the county clerk by this chapter, the county clerk, or if he be absent or unable to act, a deputy county clerk designated by the clerk, shall be secretary of the board of county canvassers. In every other county of the state the president of the board of elections shall be the secretary of the board of county canvassers, or if he be absent or unable to act, the secretary of such board shall be the secretary of the board of county canvassers. When a chairman of the board of county canvassers shall have been chosen, as above provided, the secretary of such board shall thereupon administer the constitutional oath of office to the chairman, who shall then administer such oath to each member, and to the secretary of the board. A majority of the members of any board of canvassers shall constitute a quorum thereof. If, on the day fixed for such meeting, a majority of any such board shall not at-

tend, the members of the board then present shall elect the chairman of the board and adjourn to some convenient hour of the next day. If such board or a majority thereof, shall fail or neglect to meet within two days after the time fixed for organizing such board, the supreme court, or any justice thereof, or county judge within such county, may compel the members thereof by writ of mandamus to meet and organize forthwith.

Derivation: Election Law, § 130, as amended by L. 1897, ch. 379, § 21; L. 1900, ch. 105, § 1; L. 1903, ch. 643, § 22; L. 1908, ch. 105, § 1.

Amended by L. 1910, ch. 132; L. 1916, ch. 537, in effect May 15, 1916.

**Consolidators' note.**—In the Election Law of 1896, this section constituted the board of supervisors of each county the county board of canvassers for the county, exception, however, being made of the counties of New York and Kings, where the boards of aldermen of the cities of New York and Brooklyn were made the county canvassers, these counties having under the Constitution (art. 3, § 26) no supervisors whatever as their boundaries coincided with those of the cities. When in 1897 both cities were merged in the "greater New York," the coincidence of city and county lines ceased, and the two counties thereby lost their constitutional immunity from supervisors, and at the same time by L. 1897, ch. 380, the constitutional requirement was complied with by providing that members of the municipal assembly should be elected "as such and also as supervisors" from the several counties within the city, but their powers "as supervisors" were restricted to (1) acting as county canvassers; and (2) subdividing their counties into assembly districts (a constitutional function). At the same time L. 1897, ch. 379, amended this section by eliminating the exceptional provisions for New York and Kings counties, and made the supervisors the county canvassers in every county.

In 1899, article 3, section 26 of the Constitution was amended so as to abolish the office of supervisor in counties within and less than a city, and to permit the functions of the office to be devolved upon the local municipal legislature, and later, L. 1901, ch. 466, amended section 1548 of the New York city charter by vesting the powers and duties of the several boards of supervisors of the counties within the city in "the board of aldermen," which board, by virtue of legislation concurrent with the foregoing, succeeded to the former "municipal assembly." It should be noted that from 1897 until 1900, when the constitutional amendment went into effect, the aldermen and members of the common council of the city of New York were actually also elected as supervisors, the ballots reading "for Alderman (or Councilman) and Supervisor," but that since 1900 they have been elected only as aldermen (or councilmen).

This situation has given rise to two claims: (1) that the duties of the county canvassers were devolved upon "the board of aldermen," i. e. the whole board, and (2) that they were devolved upon only those members of the board who were elected within the county, in spite of the language of the statute that they "are vested in the board of aldermen." In another aspect the question is whether L. 1897, ch. 380, was in effect repealed or not by the constitutional amendment of 1899, with or without the subsequent act of 1901. For the complete argument on both sides of the question reference is made to the briefs of counsel in *Matter of Saxfield v. Board of Aldermen*, reported in 102 App. Div. 358, also to the conflicting opinions of successive corporation counsels and to the communications addressed to the corporation council forming a part of the record of that case. The Supreme Court at special term, in an unconvincing opinion by Marean, J., held that the county canvassers were only the aldermen elected from the county. The appellate division of the second department did not pass on the question, disposing of the case on the ground that the party initiating the proceedings had not the right to maintain them. The question may therefore fairly be said to be an open one. At all events the case exhibits a serious omission by the Legislature.

That omission is here supplied by changing the sentence reading "The county board of canvassers of counties wholly or partly within the city of New York shall be the city board of canvassers of the city of New York within their respective counties," to "The county board of canvassers of each county within the city of New York shall consist of the members of the board of aldermen of the city of New York elected as such within the county. The



said county boards of canvassers shall also within their respective counties be the city board of canvassers of such city.

The effect of this change is, briefly, to give express warrant for what is now the actual practice and to supply the legislative sanction, presumably omitted by mistake, for a continuance of the former method of canvass, in line with Mr. Justice Marten's opinion, also to settle the dispute in the *Scotfield* case, but not passed upon by the appellate division, whether the presidents of the boroughs are members of the canvassing boards since they are, for some purposes at least, members of the board of aldermen.

**Secretary of Board.**—In case the county clerk refuses to perform his duty as secretary, the remedy is not confined to the procuring of a writ of mandamus to compel performance, but the board has power to designate one of its number as secretary *pro tem*. *People ex rel. Daley v. Rice*, (1892) 129 N. Y. 449, 14 L. R. A. 643.

The duty of a county clerk as secretary to the Board of County Canvassers, is purely ministerial, and he cannot assume to sit in judgment upon the action of that body. *People ex rel. Daley v. Rice*, (1892) 129 N. Y. 449, 14 L. R. A. 643.

**Adjournment.**—Where a board of canvassers of a town are required to meet for the performance of their duty on a particular date and there is no limit of time mentioned within which the duty must be performed, it would be competent to adjourn such a meeting and even if the meeting was adjourned *sine die*, to assemble again and perform the undischarged duty. *People ex rel. Smith v. Schellein*, (1884) 85 N. Y. 124.

### § 431. Production of returns and tally sheets.

As soon as such board of county canvassers shall have been organized, the officer with whom they were filed shall deliver to such board of canvassers all the returns with tally sheets annexed containing the original statements of canvassers received from inspectors of election for districts within the county for which said board are county or city canvassers. The original statements which have been delivered to members of the board of canvassers shall then be delivered to the board. If any member of the county board of canvassers shall be unable to attend the first meeting of such board, he shall, at or before such meeting, cause to be delivered to the secretary of such board any original statement that may have come into his possession. If, at the first meeting of a county board of canvassers of any county, all returns with tally sheets annexed so required to be produced shall not be produced before the board, it shall adjourn to some convenient hour of the same or the next day, and the secretary of such board shall, by special messenger or otherwise, obtain such missing returns, if possible, otherwise he shall procure the other set of returns with tally sheets annexed, or, failing that, the third set of returns without tally sheets, in time to be produced before such board at its next meeting. At such first meeting, or as soon as an original statement of the result of the canvass of the votes cast at such election in every election district of the county shall be produced before such board, the board shall proceed to canvass the votes cast in such county at such election.

Derivation: Election Law § 131 as amended by L. 1897, ch. 370 § 22.

Amended by L. 1913, ch. 821, L. 1916, ch. 537 in effect May 15 1916.

Cross-references.—Destruction of election returns. Penal Law, § 1429 (part 1, post).

The powers and duties of a county board of canvassers are purely ministerial. They cannot act judicially. *People ex rel. Blodgett v. Board*,



(1892) 44 N. Y. St. Rep. 738, 19 N. Y. Supp. 206; *People ex rel. Derby v. Recs.* (1891) 129 N. Y. 461; *Felt's Case*, (1871) 11 Abb. Pr. (N. S.) 204.

The county board cannot estimate the number of votes cast from the sample ballots attached to the inspectors' certificates instead of from the face of the return. *People ex rel. Noyes v. Board*, (1890) 34 N. Y. St. Rep. 8; *Matter of Noyes*, (1890) 34 N. Y. St. Rep. 127; *People ex rel. Noyes v. Board*, (1892) 126 N. Y. 392. It should be noted that the present law does not require sample ballots to be attached to the returns made by the inspectors.

It is clearly the intention of the statute that the official statement made after and in accordance with the proclamation of the result of the canvass, which is required to be certified to as correct over the signatures of the inspectors, shall form the basis of the estimate of the board of canvassers. *Matter of Noyes*, 34 N. Y. St. Rep. 127. But see *Matter of Stewart*, post.

**Tally sheet as original record.**—The tally sheet being the original entry of the casting and canvassing of a vote under the Election Law is intended by the legislature to furnish a contemporaneous official record of the actual count which shall control in case of any discrepancy between it and the clerical statement made from it by the inspectors after the completion of the canvass and for the purpose of convenience. *Matter of Stewart*, (1898) 155 N. Y. 545, aff'g 24 App. Div. 201, 48 N. Y. Supp. 957.

The original statement prescribed by section 111 (now § 373) of the Election Law is called an original for the reason that it is necessary to attach to it the void ballots and those protested as marked for identification, but it is not an original document in any other sense and is a purely ministerial act of the inspectors that cannot control the tally sheet of which it is an abstract. *Matter of Stewart*, (1898) 155 N. Y. 545, aff'g 24 App. Div. 201, 48 N. Y. Supp. 957.

The provision for the canvass of votes from the inspectors' statements made by section 131 (now § 431) of the Election Law, while it contemplates that the board of county canvassers shall act upon such statements without recourse to the tally sheets, when the statements are unchallenged as to their accuracy does not make those statements the best evidence of the final result of the election in case they are attacked for mistake or fraud. *Matter of Stewart*, (1898) 155 N. Y. 544, aff'g 24 App. Div. 201, 48 N. Y. Supp. 957.

The court cannot compel the county board of canvassers to change the returns of a general election so as to show separately the number of votes cast for the office of governor in the name of and under the emblem of the political party whose candidate for the office was the same as that of another political party, in order that it shall appear from the returns filed in the office of the secretary of state whether or not such first mentioned political party polled ten thousand votes for state officers at such election, and is thus entitled to make its nominations for the next year by convention. *People ex rel. Boies v. Board of Canvassers*, (1903) 79 App. Div. 514, 80 N. Y. Supp. 26.

### § 432. Correction of clerical errors in election district statements.

If, upon proceeding to canvass such votes, it shall clearly appear to any county board of canvassers that certain matters are omitted from any such statement which should have been inserted, or that any merely clerical mistakes exist therein, they shall have power, and such power is hereby given, to summon the election officers whose names are subscribed thereto before such board, and such election officers shall forthwith meet and make such correction as the facts of the case require; but such election officers shall not change or alter any decision before made by them, but shall only cause their canvass to be correctly stated. The board of county canvassers may adjourn from day to day not exceeding three days in all, for the purpose of obtaining and receiving such corrected statements.

Derivation: Election Law, § 132

Amended by L. 1913, ch. 821, in effect Dec. 17, 1912.

The board of county canvassers has only ministerial and not judicial duties to perform and cannot enter upon a judicial investigation to ascertain the genuineness of a return which the law required to be returned to it. Such return is favored by the presumption of official honesty and regularity. If the returns are not regular, the board should send them back to the inspectors for correction. *People ex rel. Russell v. Board*, (1887) 46 Hun 390, *People ex rel. Noyes v. Board*, (1890) 34 N. Y. St. Rep. 8, *Matter of Noyes*, (1890) 34 N. Y. St. Rep. 127; *People ex rel. Noyes v. Board*, (1891) 128 N. Y. 302, *People v. Cook*, (1853) 8 N. Y. 67; *People ex rel. Denchler v. Board*, (1882) 64 How. 337, *Matter of Felt*, (1871) 11 Abb. (N. S.) 207; *People v. Van Slyck*, 1825) 4 Cow. 297. *Ex parte Heath*, (1842) 3 Hill 42. *Kortz v. Canvassers*, (1882) 12 Abb. N. C. 84.

The board of state canvassers act ministerially in the main in making their certificate. Their judicial power extends no further than to take notice of matters of public notoriety. The Supreme Court alone has the power to go behind the returns of the canvassers and the ballot box and determine the intention of the voters by evidence aliunde the return. *People v. Cook*, (1853) 8 N. Y. 67, aff'g 14 Barb. 259.

A writ of mandamus will issue to compel the canvassing board to send back to the inspectors, for correction, returns which do not show upon their face that any particular person received any votes whatsoever, and which do not contain a statement of the number of general ballots protested as "marked for identification." *People ex rel. Ranton v. City of Syracuse*, (1893) 88 Hun 203, 34 N. Y. Supp. 651.

A mandamus will lie to compel the county board to send back to the inspectors for correction returns upon which the names of candidates are incorrectly given or misspelled. *People ex rel. Munro v. Board*, (1892) 129 N. Y. 469.

**Summoning inspectors to correct return.**—When the statement or return of election district inspectors states a less number of votes for certain candidates than that shown by the unquestioned tally sheet, the board of county canvassers may be required by mandamus, on the petition of the candidates prejudiced by the return, to exercise the power conferred by section 132 (now § 432) of the Election Law to summon the inspectors to correct their return, and also, independently of the Election Law, the inspectors may be required, by mandamus, to convene and make a correct return, and the county board of canvassers directed to canvass the corrected return. *Matter of Stewart*, (1898) 155 N. Y. 545, aff'g 24 App. Div. 201, 48 N. Y. Supp. 857.

**Correction of clerical errors only.**—Where it does not clearly appear that a clerical error exists in the returns of a canvass, an application to the court to have it corrected will be refused. *In re Election of Alderman of First Ward, City of Buffalo*, (1897) 42 N. Y. Supp. 241.

Inspectors of election cannot correct any other than clerical errors in the return of a canvass. *In re Election of Alderman of First Ward, City of Buffalo*, (1897) 42 N. Y. Supp. 241.

Inspectors of election have no power to alter their first determination and statement after the same has been filed. *People ex rel. Russell v. Board*, (1887) 46 Hun 390, 20 Abb. N. C. 19.

Returns may be sent back to the inspectors for correction in case of a clerical error, but not for a recount. *People ex rel. Noyes v. Board*, (1892) 128 N. Y. 302.

Boards of canvassers have no power conferred upon them to correct frauds or rectify mistakes, except clerical ones. Their duty is simply to add together the statements of results filed with them by inspectors. *People ex rel. Blodgett v. Board*, (1892) 44 N. Y. St. Rep. 738, 19 N. Y. Supp. 205.

Where the inspectors of election have made a canvass of votes, they cannot be compelled or permitted thereafter to make a new one. *People ex rel. Fisher v. Devermann*, (1894) 83 Hun 181, 31 N. Y. Supp. 593.

The right of the county canvassers to summon the district inspectors for the correction of errors refers only to errors that may appear on the face of the return or tally sheet, or both; and undoubtedly the board of county canvassers can be compelled by mandamus to summon district inspectors

for the purpose of making such corrections. *People ex rel. Fiske v. Inspectors of Election* (1917), 142 Misc. 136, 164 N. Y. Supp. 306.

The statute as to counting and certifying the votes of electors of various offices is very plain and concise and local inspectors must count the votes as they receive and certify them. The county canvassing boards must, upon those returns, declare the result. They have power to have corrected clerical errors made by local boards or send for complete returns under the statute, but the power is nowhere given in the statute to a canvassing board to reject any vote that comes to it certified in due form by the local inspectors as having been cast at the election. *Matter of Woods* (1893), 5 Misc. 355, 26 N. Y. Supp. 100.

### § 433. Mandamus to county or state boards of canvassers to correct errors.

The supreme court may, upon affidavit presented by any voter, showing that errors have occurred in any statement or determination made by the state board of canvassers, or by any board of county canvassers, or that any such board has failed to act in conformity to law, make an order requiring such board to correct such errors, or perform its duty in the manner prescribed by law, or show cause why such correction should not be made or such duty performed. If such board shall fail or neglect to make such correction, or perform such duty, or show cause as aforesaid, the court may compel such board, by writ of mandamus, to correct such errors or perform such duty, and if it shall have made its determination and dissolved, to reconvene for the purpose of making such corrections or performing such duty. Such meeting of the board of state or county canvassers shall be deemed a continuation of its regular session, for the purpose of making such corrections or otherwise acting as the court may order, and the statements and certificates shall be made and filed as the court shall direct, and shall stand in lieu of the original certificates and statements so far as they shall vary therefrom, and shall in all places be treated with the same effect as if such corrected statements had been a part of the originals required by law.

A special proceeding authorized by this section must be commenced within four months after the statement or determination in which it is claimed errors have occurred was made, or within four months after it was the duty of the board to act in the particular or particulars as to which it is claimed to have failed to perform its duty.

**Derivation:** Election Law, § 133.

This section in effect re-enacts chapter 460 of the Laws of 1880, heretofore repealed, authorizing the Supreme Court in proceedings by writ of mandamus to correct errors in the determination of boards of county canvassers and to compel them to reconvene and declare a truthful result of the returns before them. *People v. Canvassers* (1882) 64 How. 201, 367, 367, 334. *Kortz v. Canvassers*, (1882) 12 Abb. N. C. 84, *People ex rel. Noyes v. Board*, (1890) 34 N. Y. St. Rep. 8; *Matter of Noyes*, 34 N. Y. St. Rep. 127. *People ex rel. Noyes v. Board*, (1891) 126 N. Y. 392. But see *People v. Supervisors*, 12 Barb. 217, holding that a mandamus will not lie to compel the board of canvassers after it has performed its duties and has adjourned sine die to reassemble and correct its decision.

**When refusal of mandamus proper.**—When a relator seeks a determination by mandamus of a canvassing board that he has been elected to an office in the possession of another, claiming title thereto, who is not a party to the proceeding, the court may refuse the writ as a matter of discretion, leaving him to his remedy in the action provided by law for the determination of a title to an office. *Matter of Hart*, (1899) 158 N. Y. 278.

A mandamus will not lie to compel the board of county canvassers to canvass the returns before them when it is proven to the court that such returns are illegal because of a violation of the statute by the inspectors in receiving and counting certain votes. *People ex rel. Munro v. Board*, (1892) 129 N. Y. 469.

The Supreme Court at Special Term cannot issue a writ of peremptory mandamus which is by force of its terms and commands, in effect, an

order which restrains the board of state canvassers engaged in the performance of or about to perform a duty imposed by the statute. *Code Civ. Pro.*, § 406, *People ex rel. Derby v. Rice*, (1892) 129 N. Y. 461.

The county board is merely an administrative body. It cannot exercise the high judicial function of passing upon the constitutionality of a statute. Nor will the court direct the board to do what they have no power in themselves to do, but must confine itself to correcting errors they may have made. *Matter of Woods*, (1893) 5 Misc. Rep. 575, 24 N. Y. Supp. 100.

An application under this section to compel inspectors of election to correct a canvass by striking out the votes given by women in a school commissioner district on the ground that the statute by which women were permitted to vote (L. 1892, ch. 214) is unconstitutional, should be denied. *Matter of Woods*, (1893) 5 Misc. Rep. 575, 24 N. Y. Supp. 100.

The court has an inherent power to review the action of election officers or boards of canvassers, but before it can act must find authority to do so in the Election Law. *People ex rel. Cantor v. County Board of Canvassers*, (1915) 174 App. Div. 880, 174 N. Y. Supp. 375.

The court has no power to interfere by mandamus with the canvassing of returns regular upon their face by the county board when it is simply alleged that fraud has been committed in the counting of votes by the inspectors. If there were two returns, one true and the other false, the court might compel the board to canvass the true one. *People ex rel. Gregg v. Board*, (1889) 34 Hun 595, 8 N. Y. Supp. 259.

Until the legal presumption is overcome that state officers will perform their statutory duties, a peremptory mandamus will not lie. *People ex rel. Derby v. Rice*, (1892) 129 N. Y. 461.

The question whether fraud has been committed in making the returns cannot be properly tried in a proceeding to compel the board of county canvassers to canvass the returns. This question can only be tried in a contest before the proper tribunal. *People ex rel. Hatzel v. Board*, 58 How. 141.

The court should not permit to be canvassed by the state board a return containing the result of an illegal and erroneous canvass by the board of county canvassers in excess of its jurisdiction. *People ex rel. Daley v. Rice*, (1892) 129 N. Y. 449, 14 L. R. A. 613.

A mandamus is proper directing the board of county canvassers not to canvass irregular returns. *People ex rel. Russell v. Board*, (1887) 46 Hun 390, 20 Ath. N. C. 19.

Where an official board acts only ministerially the court has a clear right to direct its ministerial action. *Matter of Noyes*, (1890) 34 N. Y. St. Rep. 127.

For the settlement of contests over elections courts exist, with adequate powers to investigate the causes of complaints, and for that end to take proofs and to judge accordingly. Boards of canvassers have no such powers. *People ex rel. Derby v. Rice*, 1892, 129 N. Y. 461.

The public has an interest, quite as great, perhaps, as an individual candidate, in the result of an election, and any citizen has the right to invoke the aid of the court in compelling boards of canvassers to perform their official duties. *People ex rel. Daley v. Rice*, (1892) 129 N. Y. 449, 14 L. R. A. 643.

A peremptory writ of mandamus is proper to compel the board of canvassers to reject a second return. *People ex rel. Fiske v. Doremann*, (1895) 83 Hun 181, 31 N. Y. Supp. 593.

What reviewable by mandamus. Upon an application for a writ of mandamus to require the board of canvassers of a county to reconvene and correct alleged errors in its canvass of the votes cast upon a question submitted, the court has no power to decide whether the question as printed on the ballot was in the form prescribed by law. *People ex rel. Williams v. Board of Canvassers*, (1905) 105 App. Div. 197, 94 N. Y. Supp. 896, *aff'd* 163 N. Y. 528.

### § 434. Proceedings of state board of canvassers upon corrected statements of county boards.

When a new or corrected statement or certificate, made by a board of county canvassers under the provisions of the preceding section, shall vary from the original statement or certificate with reference to votes for the offices of governor, lieutenant-governor, judge of the



court of appeals, justice of the supreme court, secretary of state, comptroller, state treasurer, attorney-general, state engineer and surveyor, senator or representative in congress, or any of them, the county clerk, or other officer with whom the same is filed, shall forthwith prepare and transmit certified copies thereof to the officials mentioned in section four hundred and thirty-nine of this article, in the manner therein prescribed. The secretary of state shall thereupon file in his office the certified copy received by him, and obtain from the governor and comptroller the certified copies received by them, or either of them, and file the same in his office. He shall then, and within five days after any such certified copy has been received by him, appoint a meeting of the state canvassers to be held at his office, or the office of the state treasurer or comptroller, and the said board of state canvassers shall, from such certified copies, proceed to make a new statement of the whole number of votes given at the election referred to in such statement for the various offices above mentioned, or any of them, so far as the number of votes for any particular office or candidate has been changed by such new or corrected statement in the manner provided by section four hundred and forty-two of this article. Upon the new or corrected statement thus made, the said board of state canvassers shall then proceed to determine and declare what person or persons whose votes are affected by such new or corrected statement have been, by the greatest number of votes, duly elected to the various offices, or any of them, and the statement, certificate and declaration thereupon made shall stand in lieu of the original statement, declaration and certificate so far as the latter are changed by the former.

**Derivation:** Election Law, pt. of § 134

### § 435. Mandamus to state board to canvass corrected statements of county boards.

The supreme court shall, upon application of a candidate interested in the result of such new or corrected statement, or of any voter in the county from which such statement came, and upon proof by affidavit that the same has been made and filed as herein provided, and that the state board of canvassers has neglected or refused to act thereon within the time above prescribed, require said board to act upon such new or corrected statement, and canvass the same as above provided, or show cause why it should not do so; and in the event of the failure of such board to act upon such new or corrected statement and canvass the same, or show cause as aforesaid, the court may compel such board by writ of mandamus to act upon and canvass such new or corrected statement, and make a statement, certificate and declaration in accordance therewith; and if the state board of canvassers shall have made a determination, and adjourned or dissolved before receiving such new or corrected statement, the court may compel such board to reconvene for the purpose of carrying out its order and direction; and for that purpose the meeting of said board shall be deemed a continuance of its regular session.

**Derivation:** Election Law, pt. of § 134.

### § 436. Proceedings upon corrected statements.

The state board of canvassers and the secretary of state shall respectively have the same powers and discharge the same duties with reference to new or corrected statements, that they have and are charged with with reference to original statements.

**Derivation:** Election Law, pt. of § 134

**Consolidators' note.** — The old section charged the officers in question with the same powers and duties "with reference to statements made under this section that they have and are charged with under the provisions of sections one hundred and thirty nine and one hundred and forty of this act." The section having been split up, this is now made to charge them with the same powers and duties "with reference to new or corrected statements that they have and are charged with with reference to original statements."

### § 437. Statements of canvass by county boards; preservation of protested, void and wholly blank ballots.

Upon the completion by a county board of canvassers of the canvass of votes of which original statements of canvass are by law required to be delivered to them, by the boards or officers with whom the same may have been filed by the inspectors of election, they shall make separate statements thereof as follows:

1. One statement of all such votes cast for each office of elector of president and vice-president of the United States.
2. One statement of all such votes cast for each state office, to include, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, a separate statement of the number of votes cast for him as the candidate of each party or independent body by which he was nominated.
3. One statement of all such votes cast for each office of representative in congress, except that the board of canvassers in the county of New York shall not make a statement of the votes cast in any election district in said county, for any candidate for the office of assemblyman, senator or representative in congress, the candidates for which were also voted for by voters in election districts in any county not within the city of New York.
4. One statement as to all such votes cast upon every proposed constitutional amendment or other proposition or question duly submitted to all the voters of the state.
5. One statement as to all the votes cast for all and each of the candidates for each office of member of assembly for which the voters of such county or any portion thereof, except as provided in paragraph numbered three in this section, were entitled to vote at such election.
6. One statement as to all the votes cast for each county office, and office of school commissioner, for which the voters of such county, or any portion thereof, were entitled to vote at such election, and to be canvassed by them.



7. One statement as to all the votes, if any, so cast upon any proposition or question upon which only the voters of such county were entitled to vote at such election.

8. In the counties wholly or partly within the city of New York, the respective county boards shall make a separate statement as to the votes, if any, so cast upon any proposition or question upon which only the voters of such city were entitled to vote at such election in such county or portion thereof.

Each such statement shall set forth, in words written out at length, all votes cast for all the candidates for each such office; and if any such office was to be filled at such election by the voters of a portion only of a county, all the votes cast for all the candidates for each office in any such portion of a county, designating it by its proper district number or other appropriate designation; the name of each such candidate; the number of votes so cast for each, and, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, the number separately stated of votes cast for him as the candidate of each party or independent body by which he was nominated; and the whole number of votes so cast upon any proposed constitutional amendment or other proposition or question, and all the votes so cast in favor of and against the same respectively. In the counties wholly or partly within the city of New York the respective county boards shall make a separate statement of the votes cast for all the city officers voted for by the voters of such city or any portion thereof, within such counties.

The statements required by this section shall each be certified as correct over the signatures of the members of the board, or a majority of them, and shall be filed and recorded in the office of the board of elections of each county, except in the counties wholly within the city of New York, and in such counties they shall be filed in the office of the county clerk. When the whole canvass shall be completed, all original statements of canvass used thereat shall be filed in the office of the secretary of the board, who shall file a report of such canvass with the board of supervisors, except in counties wholly within a city of the first class. The original statement of canvass not used at the canvass and the packages of protested, void and wholly blank ballots shall be retained in the office in which or by the officer with whom they were filed, except as otherwise expressly provided by law. The packages of protested, void and wholly blank ballots shall be retained inviolate in the office in which they are filed subject to the order and examination of a court of competent jurisdiction, or to examination

by a committee of the senate or assembly to investigate and report on a contested election of member of the legislature where such ballots were cast at such election, and may be destroyed at the end of six months from the time of the completion of such canvass, unless otherwise ordered by a court of competent jurisdiction or unless such committee examination be pending.

Derivation: Election Law, § 135, as amended by L. 1897, ch. 379, § 23.

Amended by L. 1913, ch. 821; L. 1914, ch. 244; L. 1916, ch. 537, in effect May 15, 1916.

The statement returned by a board of county canvassers to the state board may not lawfully contain anything save the whole number of votes given in the county, the names of the candidates, and the number of votes given for each, and this must be made up solely from the original statements of the canvass returned by the inspectors in each and all of the election districts of the county. *People ex rel. Derby v. Rice*, (1892) 129 N. Y. 461.

A board of county canvassers has no authority to transmit with their official returns any paper attacking the validity of the election, and, if such paper is so transmitted, the state board has no power to consider it. *People ex rel. Derby v. Rice*, (1892) 129 N. Y. 461.

It was held in *People ex rel. Daley v. Rice*, (1892) 129 N. Y. 449, 14 L. R. A. 643, that where the county clerk, acting as secretary to the board of county canvassers, refused to sign and attest the statements of canvass prepared by them, one of their number could be appointed by the board to perform such acts. But it should be noticed that the present law does not require the county clerk to sign the statements. The signatures of a majority of the board of canvassers only is necessary.

The duty of a county clerk as secretary to the board of county canvassers is purely ministerial, and he cannot assume to sit in judgment upon the action of that body. *People ex rel. Daley v. Rice*, (1892) 129 N. Y. 449, 14 L. R. A. 643.

**Congressional election.**—The Supreme Court may, on allegations of the candidate defeated in a close congressional district to the effect that ballots cast for him were erroneously thrown out by the election inspectors, order an inspection of the void and protested ballots, although no congressional contest of the elections has been begun. *Matter of Van Cott*, (1901) 34 Misc. 411, 69 N. Y. Supp. 934.

**Separate return of votes cast for candidates of political parties.**—The court cannot compel a county board of canvassers to make its return so as to show separately the number of votes cast for the office of governor in the column and under the emblem of a political party whose candidate for the office of governor was the same as that of another political party, in order that it may appear from the returns filed in the office of the secretary of state whether or not such political party polled the required number of votes for state officers to entitle it to make its nominations by convention during the next year. There is no provision in the statute authorizing such a separate return. *People ex rel. Boies v. Board of Canvassers*, (1903) 75 App. Div. 514, 90 N. Y. Supp. 23.

City officers, canvass of votes for. *Report of Atty.-Gen.* (1897) 314-317.

**§ 438. Decisions of county boards as to persons elected.**

Upon the completion of the statements required by the preceding section the board of canvassers for each county shall determine what person has by the greatest number of votes been so elected to each office of member of assembly to be filled by the voters of each county for which they are county canvassers if constituting one assembly district, or in each assembly district therein, if there be more than one, and each person elected by the greatest number of votes to each county office of such county to be filled at such election. The board of elections of the county of Hamilton shall forthwith transmit to the board of elections of the county of Fulton a certified copy of the statements so filed and recorded in its office of the county board of canvassers of Hamilton county as to all the votes so cast in Hamilton county for all the candidates and for each of the candidates for the office of member of assembly of the assembly district composed of Fulton and Hamilton counties; and the board of elections of Fulton county shall forthwith deliver the same to the Fulton county board of canvassers, who shall from such certified copy, and from their own statement as to the votes so cast for such office in Fulton county, determine what person was at such election elected by the greatest number of votes to such office. Such board of each county shall determine whether any proposition or question submitted to the voters of such county only has by the greatest number of votes been adopted or rejected.

All such determinations shall be reduced to writing and signed by the members of such board, or a majority of them, and filed and recorded in the office of the board of elections of such county, except in the counties wholly within the city of New York, and in such counties the county clerk, who or which shall each cause a copy thereof, and of the statement filed and recorded in his or its office, upon which such determination was based, to be published once in each of the newspapers designated to publish election notices and the official canvass; provided, however, that the statement of canvass to be published shall not give the vote by election districts but shall contain only the total vote for a person, or the total vote for and the total vote against a constitutional amendment or other proposition or question, cast within the county, or within the portion thereof if any in which an office is filled or proposition or question is decided by the voters if the canvass of the vote

thereon devolves upon the county board of canvassers. If a candidate for governor or member of assembly was nominated by two or more parties or independent bodies, the published statement shall show the number separately stated of votes cast for him as the candidate of each such party or independent body. The board of elections of each county, except in the counties wholly within the city of New York, and in such counties the county clerk, shall prepare as many certified copies of each certificate of the determination of the county board of canvassers of such county as there are persons declared elected in such certificate, and shall, without delay, transmit such copies to the persons therein declared to be elected, respectively.

Derivation: Election Law, § 136, as amended by L. 1897, ch. 379, § 24. L. 1905, ch. 643, § 23

Amended by L. 1916, ch. 537, L. 1921, ch. 392, in effect April 30, 1921

**Canvass of votes cast for persons of similar names.**—A board of county canvassers cannot determine that the votes cast for several somewhat similar names were all intended for the same person, and from the result thus reached issue a certificate of election to him, but they should certify separately the separate names and issue the certificate of election to the one entitled thereto on the face of the return. *People ex rel. Nathan v. County Board of Canvassers*, (1902) 75 App. Div. 110, 77 N. Y. Supp. 620.

#### § 439. Transmission of statements of county boards to secretary of state and board of elections.

Upon the filing in the office of the county clerk or board of elections of a statement of the county board of canvassers as to the votes cast for candidates for the offices of electors of president and vice-president, or as to the votes cast for candidates for state officers, except members of assembly, and for representatives in congress, or as to the votes cast on any proposed constitutional amendment or other proposition or question submitted to all the voters of the state, such county clerk or board of elections shall forthwith make two certified copies of each such statement, and,

within five days after the filing thereof in his or its office, transmit by mail one of such copies to the secretary of state, and one to the comptroller of the state. The comptroller shall forthwith upon the receipt thereof deliver such certified copy to the secretary of state. If any certified copy shall not be received by the secretary of state on or before the last day of November next after a general election, or within twenty days after a special election, he shall dispatch a special messenger to obtain such certified copy from the county clerk or board of elections required to transmit the same, and such county clerk or board of elections shall immediately upon demand of such messenger at his or its office make and deliver a certified copy to such messenger who shall, as soon as practicable, deliver it to the secretary of state.

The board of elections of each county, except a county wholly within the city of New York, and in any such county the county clerk, shall transmit to the secretary of state within twenty days after a general election, and within ten days after a special election, a list of the names and residences of all persons determined by the board of county canvassers of such county to be elected member of assembly, or to any county office; and on or before the fifteenth day of December in each year a certified tabulated statement of the official canvass of the votes cast in each such county by election districts for candidates for governor, lieutenant-governor, secretary of state, comptroller, treasurer, attorney general, state engineer and surveyor and United States senator, or any proposed constitutional amendment or other proposition, at the last preceding general election, to include, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, a separate statement of the number of votes cast for him as the candidate of each party or independent body by which he was nominated.

Upon the filing in the office of the county clerk of a county wholly or partly within the city of New York of a statement of the county board of canvassers as to the votes cast for candidates



for a city office within such city, such county clerk shall forthwith make a certified copy of each such statement and, within five days after the filing thereof in his office, deliver in a sealed envelope such certified copy to the board of elections of the city of New York; on or before the fifteenth day of December in any year in which there shall have been an election for a city office for which votes were cast in a county within the city of New York the county clerk thereof shall file with the city clerk of such city a certified copy of the official canvass of the votes cast in such county or portion thereof by election districts for such city office, and such canvass by election districts shall, as soon as possible thereafter, be published in the City Record.

**Derivation:** Election Law, § 137, as amended by L. 1907, ch. 379, § 23; L. 1900, ch. 732, § 1; L. 1901, ch. 95, § 20; L. 1905, ch. 643, § 24.

**Amended by** L. 1914, ch. 244. L. 1916, ch. 337, in effect May 15, 1916.

**Cross-references.**—Delay or destruction of election returns, Penal Law, § 142<sup>a</sup> (part 5, post).

#### **§ 440. Organization and duties of board of canvassers of the city of New York.**

The board of elections of the city of New York shall be the board of canvassers of the city of New York of the statements of the county boards of canvassers of the counties within such city of the votes cast in such city or any portion thereof for a city office or upon any proposition or question upon which only voters of such city were entitled to vote. The members of the board of elections shall meet at the usual place for holding their regular meeting on the first Monday in December succeeding a general election for a city office within such city and within thirty days after a special election, and shall organize by selecting one of the members as chairman. The secretary of the board of elections of the city of New York shall be the secretary of the board so organized, or if he be unable to serve the board may appoint a chief clerk to be such secretary. The secretary shall thereupon administer to the chairman the constitutional oath of office and the chairman shall administer such oath to the members of such board and the secretary thereof.

As soon as such board shall have organized the secretary shall deliver to such board the certified copies of the statements of the county board of canvassers of each county wholly or partly within such city of the votes cast for candidates for city office within such city and upon any proposition or question, if any, submitted to the voters of such city only, and the said board shall proceed to canvass such statements. If a certified copy of any statement of any county board



required to be delivered to said board shall not be delivered prior to the meeting and organization of said board. It may adjourn such meeting from day to day not exceeding a term of five days, and it shall be the duty of the secretary to procure from the county clerk of such county the required certified copy of such statement.

Upon the completion of such canvass said board shall make separate tabulated statements signed by the members of such board or a majority thereof, and attested by the secretary, of the whole number of votes cast for all the candidates for each office shown by such certified copies to have been voted for, the whole number of votes cast for each of such candidates, the number of votes cast in each county for them, and if the voters of only a part of a county were entitled to vote for such candidates, the part of such county, and the determination of the board as to the persons thereby elected to such office by the greatest number of votes. The said board shall also make a separate similar tabulated statement of the votes cast upon any proposition or question submitted at the election to the voters of such city only and shall make a determination as to whether such proposition or question by the greatest number of votes has been adopted or rejected.

Each such statement and determination shall be filed and recorded in the office of the board of elections, and the said board shall cause the publication of the same in at least two newspapers within each borough of such city and in the City Record. Upon the filing in the office of the board of elections of such statements and determination the president of the board of elections shall issue and transmit by mail or otherwise a certificate of election to each person shown thereby to be elected, such certificate to be countersigned by the members of the board of elections of the city of New York under the seal of the city of New York.

Derivation: Election Law, § 138, as added by L. 1897, ch. 379, § 26, and amended by L. 1901, ch. 95, § 21.

Where the votes cast for the office of alderman in an aldermanic district of the city of New York have been canvassed by the board of elections in accordance with an order of the Supreme Court directing it to count certain ballots which had been rejected as void, such canvass, when completed finally, determines the question as to what ballots should, and what ballots should not be counted for such office, subject to a review of the court in a proper action brought to determine the title to the office of the candidate determined elected. When such board has issued its certificate of election to the persons entitled thereto, such person's right to the office cannot be questioned by the board of aldermen. *People ex rel Kruliah v. Fornes* (1903), 79 App. Div. 618, 80 N. Y. Supp. 335, aff'd 175 N. Y. 114.

#### § 440-a. City boards of canvassers.

The city board of canvassers, in a city other than the city of New York, to receive the results returned by the inspectors of election for a special city election held at a time other than a general election, for the decision of city propositions submitted under a general law, shall be the common council of the city or other legislative governing body. The returns of the results of canvass by the inspectors in election districts, at any such election, shall be made to the city clerk, who shall present the same to the city board of canvassers. The city board of canvassers shall meet for the purpose of canvassing such results, not later than one week after the election.

Added by L. 1908, ch. 181, in effect Apr. 10, 1918.

#### § 441. Organization of state board of canvassers.

The secretary of state, attorney-general, comptroller, state engineer and surveyor, and treasurer, shall constitute the state board of canvassers, three of whom shall be a quorum. If three of such officers shall not attend on a day duly appointed for a meeting of the board, the secretary of state shall forthwith notify the mayor and recorder of the city of Albany to attend such meeting, and they shall forthwith attend accordingly, and shall, with the other such officers attending, constitute such board. The secretary of state shall appoint a meeting of such board at his office, or at the office of the treasurer or

comptroller on or before the fifteenth day of December next after each general election, and within forty days after each special election, to canvass the statements of boards of county canvassers of such election. He shall notify each member of the board of such meeting. The board may adjourn such meeting from day to day, not exceeding a term of five days.

**Derivation:** Election Law, § 139, as renumbered by L. 1897, ch. 379, § 27.

### § 442. Canvass by state board.

Such board shall at such meeting proceed to canvass the certified copies of the statements of the county board of canvassers of each county in which such election was held. If any member of such board shall dissent from a decision of the board, or shall deem any of the acts or proceedings of the board to be irregular, and shall protest against the same, he shall state such dissent or protest in writing signed by him, setting forth his reasons therefor, and deliver it to the secretary of state, who shall file it in his office.

Upon the completion of such canvass said board shall make separate tabulated statements signed by the members of such board or a majority thereof, of the whole number of votes cast for all the candidates for each office shown by such certified copies to have been voted for, the whole number of votes cast for each of such candidates, the number of votes cast in each county for them, and if the voters of only a district of the state were entitled to vote for any such candidate, the name and number of such district; the determination of the board as to the persons thereby elected to such office; the whole number of votes shown by such certified copies to have been cast upon each proposed constitutional amendment or other proposition or question shown by such copies to have been voted upon; the whole number of votes cast in favor of and against each, respectively; and the determination of the board as to whether it was adopted or rejected. Each such statement, dissent and protest shall be delivered to the secretary of state and recorded in his office.

**Derivation:** Election Law, § 140, as renumbered by L. 1897, ch. 379, § 27.

The state board cannot inquire into the manner of making the county board's return. *People ex rel. Daley v. Rice*, (1892) 129 N. Y. 443.

The board of state canvassers act ministerially in the main in making their certificate. Their judicial power extends no further than to take notice of matters of public notoriety. The Supreme Court alone has the power to go behind the returns of the canvassers and the ballot box and determine the intention of the voters by evidence *abundant* the return. *People v. Cook*, (1853) 8 N. Y. 67, affg 14 Barb. 259.

The office of a board of state canvassers is purely ministerial, they are simply authorized to compute the votes cast throughout the state and declare, upon the statement made up from the returns of the boards of county canvassers, what persons have received the greatest number of votes and upon the statements so made they must declare those persons to be elected. No other evidence may be received or used and no declaration may be made by such board except as based upon a determination arrived at by the statements made up by it in an arithmetical manner from the various official returns before them. *People ex rel. Derby v. Rice*, (1892) 129 N. Y. 463.

A board of county canvassers has no authority to transmit with their official returns any paper attacking the validity of the election, and, if such

paper is so transmitted, the state board has no power to consider it. *People ex rel Derby v Rice*, (1892) 129 N. Y. 461.

The state board cannot consider in making its canvass other papers or affidavits than the returns regularly laid before them by the county boards. But a mandamus will not issue to compel the secretary of state to refrain from placing before them such other papers or to compel him to return them to the county canvassers. *People ex rel Sherwood v Rice*, (1892) 129 N. Y. 391.

The state board of canvassers have no power to determine what was done in the previous year, to review or reverse the work of their predecessors, or to decide that there are vacancies in office. *Matter of Hart*, (1899) 181 N. Y. 507.

The state board cannot inquire into the eligibility of a candidate who has received votes for an office as shown upon the returns before them. But a mandamus will not issue to compel them to deliver a certificate of election to such a person if it clearly appear to the court that he is ineligible. *People ex rel Sherwood v Board*, (1892) 129 N. Y. 360.

Files of election returns from 1878 to 1905, on file in secretary of state's office, transferred to state library by chapter 274, Laws of 1907.

#### § 443. Certificates of election.

The secretary of state shall thereupon forthwith transmit a copy, certified by his signature and official seal, of each such statement as to votes cast for candidates for any office, to the person shown thereby to have been elected to such office. He shall prepare a general certificate, under the seal of this state, and attested by him as secretary thereof, addressed to the house of representatives of the United States, in that congress for which any person shall have been chosen, of the due election of all persons so chosen at that election as representatives of this state in congress; and shall transmit the same to the house of representatives at its first meeting. If any person so chosen at such election shall have been elected to supply a vacancy in the office of representative in congress, it shall be mentioned by the secretary of state in the statements to be prepared by him.

**Derivation:** Election Law, § 141, as renumbered by L. 1897, ch. 379, § 27.

#### § 444. Record in office of secretary of state of county officers elected.

The secretary of state shall enter in a book to be kept in his office the names of the respective county officers elected in this state, including school commissioners, specifying the counties and districts for which they were severally elected, and their places of residence, the offices to which they were respectively elected, and their terms of office.

**Derivation:** Election Law, § 142, as renumbered by L. 1897, ch. 379, § 27.

## ARTICLE 13.

UNITED STATES SENATORS, REPRESENTATIVES IN CONGRESS AND  
PRESIDENTIAL ELECTORS.<sup>1</sup>

- Section 449. United States senators.  
450. Representatives in congress.  
451. Electors of president and vice-president.  
452. Meeting and organization of electoral college.  
453. Secretary of state to furnish lists of electors.  
454. Vote of the electors.  
455. Appointment of messenger.  
456. Other lists to be furnished.  
457. Compensation of electors.

## § 449. United States senators.

At the general election next preceding the expiration of the term of office of a United States senator from this state, a successor to such office shall be elected by the people for a full term of six years. If a vacancy occur in the office of United States senator from this state in any calendar year less than thirty days prior to a general election, the governor shall make a temporary appointment to fill such vacancy until the first day of December in the succeeding calendar year. If such a vacancy occur in any calendar year more than thirty days prior to a general election the governor shall make a temporary appointment to fill such vacancy until the first day of December in such calendar year. Such an appointment to fill a vacancy shall be evidenced by a certificate of the governor which shall be filed in the office of the secretary of state. At the time of filing of such certificate the governor shall also issue, and file in the office of the secretary of state a writ of election directing the election of a United States senator to fill such vacancy for the unexpired term at the general election next preceding the expiration of the term of such appointment. The provisions of this chapter relating to the canvass of votes and of election results shall apply to such an election to fill a vacancy, except that the canvass of votes and results affecting the office of United States senator shall be completed by the county board of canvassers, and statements thereof certified to the secretary of state within ten days after the election and the canvass of such results completed by the state board of canvassers and statements thereof certified to the secretary of state before the first day of December following the election. Each county board of canvassers shall meet and organize for such purpose on the third day after the election and the state board of canvassers on the second Monday after election.

Added by L. 1913, ch. 822, in effect Dec. 17, 1913.

<sup>1</sup> Title amended by L. 1912, ch. 820, in effect Dec. 17, 1912.

### § 450. Representatives in congress.

Representatives in the house of representatives of the congress of the United States shall be chosen in the several congressional districts at the general election held therein in every even numbered year. If any such representative shall resign, he shall forthwith transmit a notice of his resignation to the secretary of state, and if a vacancy shall occur in any such office, the clerk of the county in which such representative shall have resided at the time of his election, shall, without delay, transmit a notice thereof to the secretary of state.

**Derivation:** Election Law, § 100, as renumbered by L. 1899, ch. 466, § 2.

**Cross-References.**—Apportionment of representatives between the states and qualifications of representatives. U. S. Const., art. 1, § 2, *id.*, 14th Amendment, §§ 2, 3 (part 2, post). Times, places and manner of election of representatives. U. S. Const., art. 1, § 4 (part 2, post). Vacancies in office. U. S. Const., art. 1, § 2 (part 2, post). Special election to fill vacancies. Election Law, § 92. Congressional districts. See Political Divisions of State, Counties and Towns (part 4, post). General certificate of election. Election Law, § 443. Resignations to be in writing and addressed to secretary of state. Public Officers Law, § 31 (part 6, post). As to apportionment and election of representatives, see also part 3, post.

### § 451. Electors of president and vice-president.

At the general election in November preceding the time fixed by the law of the United States for the choice of president and vice-president of the United States, there shall be elected by general ticket as many electors of president and vice-president as this state shall be entitled to, and each voter in this state shall have a right to vote for the whole number, and the several persons, to the number required to be chosen, having the highest number of votes shall be declared and be duly appointed electors.

**Derivation:** Election Law § 121, as renumbered by L. 1890, ch. 466, § 2.

**Cross-References.**—Appointment, number and qualifications, etc., of electors. U. S. Const., art. 2, § 1 (part 2, post). See also as to presidential electors, part 3, post.

### § 452. Meeting and organization of electoral college.

The electors of president and vice-president shall convene at the capitol on the second Monday in January next following their election, and those of them who shall be assembled at twelve o'clock, noon, of that day, shall immediately at that hour fill, by ballot and by plurality of votes, all vacancies in the electoral college occasioned by the death, refusal to serve, or neglect to attend at that hour, of any elector, or occasioned by an equal number of votes having been given for two or more candidates. The electoral college being thus completed, they shall then choose a president, and one or more secretaries from their own body.

**Derivation:** Election Law, § 102 as renumbered by L. 1899, ch. 466, § 2.

**Cross-References.**—Date of meeting. See U. S. Statutes (part 3, post). Vacancies in electoral college. See U. S. Statutes (part 3, post).



### § 453. Secretary of state to furnish lists of electors.

The secretary of state shall prepare three lists, setting forth the names of such electors, and the canvass under the laws of this state of the votes given for each person for whose election any and all votes were given, together with the certificate of determination thereon, by the state canvassers; procure to the same the signature of the governor; affix thereto the seal of the state, and deliver the same thus signed and sealed to the president of the college of electors on the second Monday in January.

Derivation: Election Law, § 193, as renumbered by L. 1899, ch. 466, § 2.

Cross-References. - Similar provisions in U. S. Statutes (part 2, post).

### § 454. Vote of the electors.

Immediately after the organization of the electoral college, the electors shall then and there vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of this state. They shall name in their ballots the person voted for as president, and in distinct ballots, the person voted for as vice-president. They shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and after annexing thereto one of the lists received from the secretary of state, they shall seal up the same, certifying thereon that lists of the votes of this state for president and vice president are contained therein.

Derivation: Election Law, § 194, as renumbered by L. 1899, ch. 466, § 2.

Cross-References. - Manner of voting prescribed by United States Constitution. See U. S. Const., 12th Amendment (part 2, post). As to certificates to be made and signed, sealed and indorsed and disposed of in certain manner, see U. S. Statutes (part 3, post).

### § 455. Appointment of messenger.

The electors shall then, by a writing under their hands, or under the hands of a majority of them, appoint a person to take charge of the lists so sealed up, and deliver the same to the president of the senate at the seat of government of the United States before the third Monday in the said month of January. In case there shall be no president of the senate at the seat of government on the arrival of the person intrusted with the lists of the votes of the electors, then such person shall deliver the lists of votes in his custody into the office of the secretary of state of the United States.

Derivation: Election Law, § 195, as renumbered by L. 1899, ch. 466, § 2.

Cross-References. As to mileage of messenger and forfeiture for messenger's neglect of duty, see U. S. Statutes (part 3, post).

### § 456. Other lists to be furnished.

The electors shall also forward forthwith, by the post-office in the city of Albany, to the president of the senate of the United States at the seat of government, and deliver forthwith to the judge of the United States court for the northern district of the state of New York, similar lists signed, annexed, sealed up and certified in the manner aforesaid.

Derivation: Election Law, § 196, as renumbered by L. 1899, ch. 466, § 2.

### § 457. Compensation of electors.

Every elector of the state for the election of a president and vice president of the United States, who shall attend at any election of those officers and give his vote at the time and place appointed by law, shall be entitled to receive for his attendance at such election, the sum of fifteen dollars per day, together with ten cents per mile each way from his place of residence by the most usual traveled route, to the place of meeting of such electors, to be audited by the comptroller upon the certificate of the secretary of state, and paid by the treasurer.

Derivation: Election Law, § 197, as renumbered by L. 1899, ch. 466, § 2.

## ARTICLE 14.

## STATE SUPERINTENDENT OF ELECTIONS.

[Title amended by L. 1915, ch. 678, in effect May 22, 1915.]

- Section 470. Metropolitan elections district. [Repealed.]
471. State superintendent of elections, chief deputy and assistants. [Repealed.]
472. Powers of superintendent, clerks and deputies. [Repealed.]
473. Deputies: appointment, qualification, examination, vacancies and terms. [Repealed.]
474. Additional deputies. [Repealed.]
475. Control and powers of deputies; refusal to furnish information. [Repealed.]
476. Aid by private persons and public officers. [Repealed.]
477. Subpoenas by state superintendent. [Repealed.]
478. Administration of oaths by superintendent and deputies. [Repealed.]
479. Attendance and duties at polling places. [Repealed.]
480. Reports by lodging-house and hotel keepers.
481. Affidavits by hotel keepers holding liquor licenses. [Repealed.]
482. Filing such reports and affidavits. [Repealed.]
483. Reports by police and certain departments. [Repealed.]
484. List to be furnished if required by the superintendent of elections.
485. Card lists of registered electors.
486. Challenge lists.
487. Salaries and expenses. [Repealed.]
488. Report to governor. [Repealed.]
489. Authority of state superintendent of elections. [Repealed.]

## § 470. Metropolitan elections district.

Repealed by L. 1911, ch. 640, in effect July 13, 1911.

§ 471. State superintendent of elections, chief deputy and assistants.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 472. Powers of superintendent, clerks and deputies.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 473. Deputies; appointment, qualification, examination, vacancies and terms.

Repealed by L. 1915, ch. 678, in effect May 22, 1916.

§ 474. Additional deputies.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 475. Control and powers of deputies; refusal to furnish information.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 476. Aid by private persons and public officers.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 477. Subpoenas by state superintendent.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 478. Administration of oaths by superintendent and deputies.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 479. Attendance and duties at polling places.

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

§ 480. Reports by lodging-house and hotel keepers.

It shall be the duty of every landlord, proprietor, lessee or keeper of a lodging-house, inn or hotel to keep a register in which shall be entered the name and residence, the date of arrival and departure

of his guests and the room, rooms or bed occupied by them. This register shall be so arranged that there shall be a space on the same line in which each guest or lodger shall sign his name, and such landlord, proprietor, lessee or keeper shall make a sworn report to the said superintendent of elections twenty-nine days before the election next ensuing, upon a blank to be prepared and furnished by such superintendent, which report shall contain a detailed description of the premises so used and occupied as a lodging-house, inn or hotel, including the size and character of the building, and in case only part of a building is so used, and also if there be more than one building on the premises, which particular building is so used, and the names of the lodgers therein and all employees and all other persons living therein including the landlord, proprietor, lessee or keeper and members of his family, who claim a voting residence at or in such lodging-house, inn or hotel, together with the length of time they have been regularly lodging or living therein, the beginning of such residence, the color, age, height, weight, color of hair, marks on face or hands, the complexion and any distinguishing marks or features of face or body whereby such persons may be identified, the place of their nativity, the occupation and place of business of such persons and the room occupied by each such person, and whether such person is a guest, landlord, proprietor, lessee or keeper and the signature of each such person. Above the space reserved for the signature of each such person shall be printed the following words "the foregoing statements are true." In the form of affidavit, which shall be sworn to by the landlord, proprietor, lessee or keeper of such lodging-house, inn or hotel, shall be included the statement that the signatures of the guests or lodgers certified to in said report, were written in the presence of such landlord, proprietor, lessee or keeper, and that he personally knows them to be the persons therein described.

To the end that the sworn report herein required shall truly set forth the facts therein stated, it shall be the duty of the said landlord, proprietor, lessee or keeper to question each person lodging

or living in such lodging house, inn or hotel as to his intention of claiming such place as a voting residence, and such person shall thereupon declare his intention thereof, and if he shall claim such place as his voting residence he shall give to such landlord, proprietor, lessee or keeper such facts regarding himself as are required to be incorporated in the sworn report herein provided for.

Any such landlord, proprietor, lessee or keeper or any lodger who shall violate this provision shall be guilty of a misdemeanor.

**Derivation:** L. 1905, ch. 659, § 1, amending L. 1898, ch. 678, § 9, *pl.* as amended by L. 1908, ch. 488, § 1.

**Amended by** L. 1911, ch. 649; L. 1915, ch. 678; L. 1918, ch. 323, in effect Apr 24, 1918.

**Cross-reference.**—Office of state superintendent of elections abolished; reports to be made to board of elections. See p. 261d, *post*.

#### **§ 481. Affidavits by hotel keepers holding liquor licenses.**

**Repealed by** L. 1921, ch. 555, in effect July 1, 1921.

#### **§ 482. Filing such reports and affidavits.**

**Repealed by** L. 1921, ch. 555, in effect July 1, 1921.

#### **§ 483. Reports by police and certain departments.**

**Repealed by** L. 1921, ch. 555, in effect July 1, 1921.

#### **§ 484. List to be furnished if required by the superintendent of elections.**

The superintendent of elections shall also have the right throughout the year whenever deemed necessary by him to require the owner or lessee of any hotel, or inn, containing less than fifty rooms and every lodging-house or dwelling to make to the superintendent, within ten days after notification, a sworn report upon a blank to be prepared and furnished by said superintendent, which said report shall contain a list giving the name of every person of twenty-one years of age and upwards, who reside in said hotel, inn, lodging-house and dwelling, together with the



period that they have resided therein, and such other information as may be deemed necessary by said superintendent, and said superintendent shall have the power whenever deemed necessary by him, to require said owner or said lessee in addition to notify said superintendent whenever any of said persons shall within twenty-nine days before election leave said hotel, inn, lodging-house and dwelling. Said superintendent shall have the power to require said list to be made by the owner if said owner is in possession. If said owner is not in possession said superintendent shall have the power to require said owner to furnish the name of the lessee and lessees of said building and said superintendent shall then have the power to require said list of said lessee and lessees. In the event that said building is occupied in part by said owner and in part by a lessee or lessees the said superintendent shall then have the power to compel the owner to furnish the said list for the part occupied by him, and the names of the lessee or lessees who lease the remaining part of said building, and said superintendent may require said lists from said lessee or lessees. In the event of the neglect of the owner or lessee to furnish said list when demanded by said superintendent of elections, said owner or lessee shall be guilty of a misdemeanor punishable by a fine of two hundred and fifty dollars, and in case of a second conviction shall be punishable by a fine of five hundred dollars and imprisonment. If the owner furnishes to said superintendent a list which states that a person has resided in said premises for a longer period than he has actually resided therein, or if said person puts upon said list a name under which no person has resided any length of time in said premises, said owner shall be guilty of a felony and in addition liable to a penalty of one thousand dollars, which said penalty shall be a lien upon the house and the lot upon which the house is situated. If the lessee furnishes a false list then the said lessee shall be liable to a penalty of one thousand dollars, which said penalty, in addition to being satisfied out of any goods or chattels of the lessee, shall be a lien upon the leasehold, and shall entitle said leasehold to be sold to satisfy said penalty subject to the rights of the land-

lord. Every penalty imposed herein upon a house or tenement shall be a lien upon the house and lot or leasehold in relation to which the penalty is imposed from the time of filing of a certified copy of the judgment in the office of the clerk of the county in which said house and lot or leasehold is situated, subject only to taxes, assessments, water rates and to such mortgages and mechanics' liens as may exist thereon prior to such filing, and it shall be the duty of the prosecuting officer upon the entry of said judgment to forthwith file the copy as aforesaid in the office of the clerk of the county and said copy upon said filing shall be forthwith indexed by the clerk in the index of mechanics' liens. A lis pendens may be filed in the office of the clerk of the county in which the realty or leasehold is situated at the time of the commencement of the proceedings under this section.

**Derivation:** L. 1898, ch. 488, § 2, amending L. 1906, ch. 689, and L. 1898, ch. 676, by adding § 9-a.

**Amended by** L. 1911, ch. 649; L. 1915, ch. 678, L. 1918, ch. 323, in effect Apr. 23, 1918.

**Cross-reference.**—Office of superintendent of elections abolished; functions herein are to be exercised by police or sheriff. See p. 261d, post.

### § 485. Card lists of registered electors.

The board of inspectors of each election district shall on each day of registration transfer to cards, to be provided for that purpose by the secretary of state, which cards shall be in form and style approved by the state superintendent of elections, a complete copy of the name of each person registered in their respective districts, together with all of the answers made and information given by the person registered, at the time of registration, and such cards, inclosed and sealed in a cover to be provided for that purpose by the secretary of state, shall be delivered personally or by mail forthwith by the chairman of the board of inspectors together with a statement on a blank form, to be furnished by the secretary of state after approval by the state superintendent of elections, that the cards delivered contain a correct copy of all the names registered and information given by the persons registered, to the state superintendent of elections at one of his offices to be designated by him.

In case of the first class the board of inspectors of each election district shall also on each day of registration transfer to the cards, to be provided for that purpose by the secretary of state, which cards shall be in form and style approved by the state superintendent of elections, a complete copy of the name of each person registered in their respective districts, together with all of the answers made and information given by the persons registered, at the time of registration and such other and further information as may be required by said card and such cards inclosed and sealed in a cover to be provided for that purpose by the secretary of state, shall be delivered personally forthwith by the chairman of the board of inspectors together with a statement on a blank form to be furnished by the secretary of state after approval by the state superintendent of elections that the cards delivered contain a correct copy of all the names registered and information given as required by said card to the police department of said city at such office as shall be designated by said police department.

**Derivation:** L. 1905, ch. 689, § 1, amending L. 1898, ch. 676, § 10.

**Amended by** L. 1911, ch. 649; L. 1915, ch. 678, in effect May 22, 1916.

**Cross-reference.**—See note to preceding section.

**§ 486. Challenge lists.**

1. The state superintendent of elections shall prepare for each election district in the city of New York a challenge list containing the names, alphabetically arranged, and addresses of all persons who, by reason of death, removal, conviction or otherwise, have lost the right to register from the addresses within such election district from which they registered at the last preceding election. Such challenge lists shall be delivered to the respective boards of registry in such city at least one-half hour before the commencement of registration. It shall be the duty of the chairman of such respective boards of registry to challenge the registration of any person applying to them for registration under any name on said challenge lists, unless it shall affirmatively appear after strict examination of the voter, and, if necessary, others also, that such voter has become domiciled at a new address within the election district. Said challenge lists shall contain a column headed "remarks" and it shall be the duty of the chairman of the respective boards of registry to enter in said column opposite the names on said lists whether any person applying for registration under any name on said lists who was challenged was allowed to register and the reason for allowing him to register. If a person applies for registration under any name on said challenge lists who is challenged and does not register then there shall be entered opposite such name in the aforesaid column headed "remarks" the words "challenged but did not register." If no person applies for registration under any name on said challenge lists then there shall be entered opposite each such name in the aforesaid column headed "remarks" the words "no application." Any duly accredited watcher shall have the right to examine such challenge list. On each day of registration the chairman of the board of registry shall make the challenges and the entries in the column headed "remarks" as heretofore provided. At the close of the last day of registration said challenge lists shall be signed and certified as true by each member of such board of registry and returned to the state superintendent of elections in a sealed envelope provided therefor by the said state superintendent.

2. After the last day of registration and before election day in each year the state superintendent of elections also shall prepare for each election district in the city of New York a challenge list containing the names, alphabetically arranged, and addresses of all persons registered in such district during said last preceding period of registration whom he shall have reason to believe, from investigation or otherwise, not to be entitled to vote at said election. Such challenge lists shall be delivered to the respective boards of inspectors in such city at least one-half hour before the opening of the polls of each election. It shall be the duty of the chairman of the respective boards of inspectors to challenge the vote of any person presenting himself to vote under any name on said challenge lists. Said challenge lists shall contain a column headed "remarks," and it shall be the duty of the chairmen of the respective boards of inspectors to enter in said column opposite the names on said lists whether any person applying to vote under any name on said lists who was challenged was allowed to vote and the reason for allowing him to vote. If a person applies to vote under any name on said challenge lists who is challenged and does not vote, then there shall be entered opposite such name in the aforesaid column headed "remarks" the words "challenged but did not vote." If no person applies to vote under any name on said challenge lists then there shall be noted opposite each such name in the aforesaid column headed "remarks" the words "no application." At the close of the polls said challenge lists shall be signed and certified as true by each member of such board of inspectors and returned to the state superintendent of elections in a sealed envelope provided therefor by the said state superintendent.

3. The state superintendent of elections shall prepare duplicates of all challenge lists provided for in this section and he shall keep said duplicate challenge lists on file in his office from the time of their preparation until the close of the third general election following the preparation of said challenge lists. The aforesaid original challenge lists shall also be kept on file for two years after the general election following their preparation.

Derivation: L. 1903, ch. 689, § 1, amending L. 1898, ch. 676, § 11.  
Amended by L. 1911, ch. 619, L. 1915, ch. 678, in effect May 22, 1915.  
Cross-reference.—See note to § 484, ante.

**§ 487. Salaries and expenses.**

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

**§ 488. Report to governor.**

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

**§ 489. Authority of state superintendent of elections.**

Repealed by L. 1921, ch. 555, in effect July 1, 1921.

L. 1921, ch. 555, § 2.—The office of state superintendent of elections is hereby abolished, together with all positions of the subordinates and employees thereof. The trustees of public buildings shall take possession of the books, papers, records and documents of such office and retain the custody thereof until otherwise provided by law. Such trustees also shall take possession of other property of the state heretofore used in connection with such office, wherever situate, and apply to the uses and purposes of state boards, departments, commissions and offices such portions thereof, as in their opinion, may be suitable therefor.

§ 3. Any provisions of the election law, not included in the repealed sections, which direct the filing of any paper, record, report or book with the state superintendent of elections, by any board of elections or local officer, shall cease to have force and effect when this act taken effect. Any investigation by the police required by section one hundred and fifty-seven of such law shall be reported to the board of elections of the county, or of a city containing the county, in which the investigation is conducted and the report shall be open to public inspection at the office of such board. The investigation provided for in section twenty-five of the election law may be required by such board of elections, and if so required, the report thereof shall be filed with such board and shall be open to public inspection. Such board of elections also, throughout the year, by its members and subordinates, may make investigations pertaining to the citizenship, residence and other qualifications of persons registered as or claiming to be voters, within the county or city. In any such investigation, the board shall have the powers prescribed by section two hundred and nine of such law. Reports by lodging-house and hotel keepers provided for in section four hundred and eighty of such law also shall be made to such board. The powers vested by section four hundred and eighty-four of such law in the superintendent of elections shall hereafter be exercised by the police of the city in which the hotel, inn, lodging-house or dwelling therein referred to is situated, or if it be situated outside of a city, such powers shall be exercised by the sheriff of the county. Any list, affidavit or report therein provided for also shall be made or filed with the captain of police of the city precinct in which such hotel, inn, lodging-house or dwelling is situated, and elsewhere with such sheriff, as the case may be and the punishments and penalties provided for by such section shall attach for a neglect to make or file such list, affidavit or report or for the making or filing of a false or incorrect list, affidavit or report. The card lists of registered electors and statements provided for by section four hundred and eighty-five of such law shall be supplied and the forms therefor approved by the secretary of state, and when filled out shall be filed with the board of elections of the county in which they are used. The challenge lists provided for in section four hundred and eighty-six shall be made by the board of elections and shall be returned by the various elections officers to such board. The board shall prepare such lists from reports of investigations made by the police and from its own investigations.



## ARTICLE 15.

## SOLDIERS' AND SAILORS' ELECTIONS.

## Section 500. Special polls in time of war.

- 501. General register of absent voters.
- 502. Poll books and oaths.
- 503. Official war ballots.
- 504. Official envelopes for war ballots.
- 505. Delivery of official war ballots, poll books and envelopes.
- 506. Lists of nominations.
- 507. Polls of election.
- 508. Opening of the polls.
- 509. Organization of the polls.
- 510. Conduct of elections.
- 511. Count of votes.
- 512. Returns not to be rejected because of informality of election.
- 513. Disposition of envelopes and ballots.
- 514. Canvass by inspectors of election.
- 515. Canvass by county board.
- 516. Canvass by state board.
- 517. Returns or statements not made and filed prior to certain dates in any year not to be canvassed.
- 518. Provisions of penal law relating to crimes against the elective franchise to apply.
- 519. Filling vacancies in the office of inspector of elections.
- 520. Elections may be contested.
- 521. General provisions concerning elections to apply.
- 522. Synopsis of this article to be published and distributed.

## § 500. Special polls in time of war.

Whenever, in time of war, any qualified voter of this state shall be in the actual military service of this state or of the United States, in the army or navy thereof, and by reason thereof absent from his election district, such absent voter shall be entitled to vote as fully as if he were present at his place of residence in the manner hereinafter provided.

Derivation: L. 1898 ch. 674 § 1

**Right to vote on excise question.**—The right to vote not being dependent on legislative action it cannot be said as matter of law that, because chapter 815 of the laws of 1917 makes no provision for taking and counting votes on excise questions submitted at an election duly held, qualified electors of a town by reason of absence while in the military service of the United States are deprived of their right to vote on such questions. Upon an application for a reconsideration of such questions it is incumbent upon the petitioner to satisfy the court that the soldiers' vote, if cast or permitted, would have changed the result and in the absence of satisfactory evidence to that effect, the

resubmission asked for will not be ordered. *Matter of Zierbel* (1918), 102 Misc. 226, 100 N. Y. Supp. 270; *Matter of Town of Ghent* (1918), 102 Misc. 259.

### § 501. General register of absent voters.

It shall be the duty of the secretary of state to prepare and make a general register on cards, by counties, in which shall be entered the names of the voters of this state absent from their respective election districts in time of war in the actual military service of this state or of the United States in the army or navy thereof. The cards in each county group shall be arranged in the alphabetical order of the names of the voters. Such card register shall contain the name and residence of each such absent voter by street and number, if any, and the name of the county and city or town in which he resides, so far as the secretary of state can ascertain the same. The card for each such absent voter shall contain also the name or number or other designation of the regiment, company, troop, vessel or other command to which such voter is attached or assigned. It shall contain also the location of such command at the time of such entry, so far as the secretary of state can ascertain the same, unless there are military reasons for omitting such information.

In order to secure the necessary information to make and complete such general register, it shall be the duty of the secretary of state to obtain from the appropriate military and naval authorities or from the most expedient source the required information. The secretary of state shall furnish proper blanks for such purpose. Such general register shall be a public record and shall at all reasonable times be open for inspection by any voter of this state. It is hereby made the duty of every public officer, and of every citizen, to furnish to the secretary of state such information as he may possess relating to such absent voters; and any person who shall refuse so to do, or shall wilfully furnish false information in reference to such absent voters, shall be deemed guilty of a felony and shall, upon conviction thereof, be punished by imprisonment in a state prison for not less than one year nor more than three years.

Derivation: L. 1898, ch. 674, § 2.

Amended by L. 1917, ch. 815, in effect Aug. 29, 1917.

Consolidators' note. The second sentence rearranged, and "he" changed to "secretary of state."

The provision imposing a duty on every citizen "to render such assistance and information as he may possess, to the secretary of state, of all the facts," etc., is made "to furnish to the secretary of state such information as he may possess," etc.

### § 502. Poll books and oaths.

It shall be the duty of the secretary of state to cause to be prepared and printed in book form a sufficient number of poll books, at least two books for each poll, for the use of the inspectors of elections at the polls of the elections held under the provision of this article. Such poll books shall be in the general form of those prescribed for use at elections in this state, omitting all columns except those for the number, name and residence of each voter, and so arranged that there can be entered therein, in addition to such entries, in separate columns, the name of the county and city or town in which the persons voting at such poll reside or claim to reside, and also the designation of the particular command to which each such person is attached or of which he forms a part. Upon the first page of each such poll book shall be printed the date and character of the election for which it is prepared, and blank spaces in which shall be written by the inspectors the place at which the poll was held, and the names and residences of the persons acting as inspectors of election thereat. Upon the page following the last page of each such poll book used for recording the names of voters at such poll, shall be printed a blank certificate, to be signed by the inspectors of election at the close of the polls. Such certificate shall be substantially in the following form:

"We, the inspectors of election for the general (or special) election held at (here follows the name of the place) on the . . . . . day of . . . . . 19 . . ., do hereby certify that the names of the persons recorded herein as having voted at such election, such persons numbering in all (here follows the number in figures and words), are all the persons who appeared before us and demanded to vote at such election, and took the oath required, and who voted at such election.

.....  
 .....  
 .....  
 .....

Inspectors of Election."

Such poll book shall also contain the oaths for the inspectors of election provided in section five hundred and nine of this article.

Derivation: L. 1898, ch. 674, § 3.

### § 503. Official war ballot.

It shall be the duty of the secretary of state to cause to be prepared and printed at least twice as many official ballots as there are voters absent from their respective election districts. All such ballots shall be uniform in size and in style of type, and the type and paper shall conform generally to that used for the regular official ballots prescribed by this chapter. At the head of the ballot shall be printed the following:

#### "OFFICIAL WAR BALLOT OF THE STATE OF NEW YORK (Year)

Read instructions carefully!

#### INSTRUCTIONS

1. To vote for all the candidates of one party for all the offices named in this ballot for which the voter is entitled to vote, make a cross X mark within the circle under the emblem of that party.

2. To vote for a certain person for a particular office, unless he is the candidate of a party under whose emblem you have made your mark in a circle, make a cross X mark in a voting square opposite his printed name, or, if his name is not printed, write it in the blank space.

3. The blank space for writing in a name is under the title of the office, or, where the names of candidates for the office are printed, is just below such printed names.

4. If two or more persons are to be elected to the same office, and you vote for a certain person or persons for that office, by individual voting marks or writing in a name or names, your vote, as to that office, will count only for the persons so indicated."

Below such instructions there shall be a horizontal line, and below such line shall appear the emblems of the parties, with a circle under each emblem. Each circle shall be approximately three-quarters of an inch in diameter and surrounded by the words "for a straight ticket mark within this circle." Such emblems, and accompanying circles, shall be arranged horizon-

tally, in the order of priority, of the parties according to the preceding vote for governor, from left to right, thus:

(Insert emblem)



(Insert emblem)



Below the circles there shall be a horizontal line.

Below the horizontal line under the circles, the ballot shall be divided into columns. At an election at which one or more offices are to be voted for by all the electors of the state, there shall be printed, beginning in the first column, the names of all nominated candidates for all such offices, in appropriate sections, in the manner provided by this chapter for the regular official ballots, with titles of offices, section numbers, emblems, voting squares, names of parties and political organizations and blank spaces for writing in names of candidates, as provided for such official ballots.

Following such matter, in as many columns as the secretary of state may deem advisable, or beginning in the first column if none of the offices are to be voted for by all the electors of the state, there shall be printed the titles of all other offices, as near as may be, for which any elector may vote in any election district of the state at such election. Such offices shall be classified into judicial, legislative, county, city, ward and town offices, and otherwise if there be offices of other classes. The title of each class shall be printed above the titles of offices in such class. Below the title of each office shall be a space or spaces for writing in the name or names of the person or persons for whom the voter desires to vote if he chooses to vote in that manner. One-half inch shall be allowed for the title of each class of offices as one-half inch space for the title of an office and writing in the name of a person as the voter's choice for such office. Each class of offices shall be separated by a heavy horizontal line across the column. Such offices and titles, except as to the spacing, shall be printed substantially as follows:



---

### JUDICIAL OFFICES.

For justice of the supreme court for.....judicial district.  
 .....

---

### LEGISLATIVE OFFICES.

For representative in congress for.....congressional district.  
 .....

For state senator for.....senate district.  
 .....

For member of assembly for.....district of.....county.  
 .....

---

### COUNTY OFFICES.

For sheriff of.....county.  
 .....

For district attorney of.....county.  
 .....

---

### CITY OFFICES.

For mayor of the city of.....  
 .....

---

### WARD OR TOWN OFFICERS.

For supervisor of.....ward or town of.....  
 .....

For justice of the peace, town of.....  
 .....

---

In a year when a president of the United States is to be elected, a separate ballot for electors of president and vice-president shall be provided which shall be in the same form as the ballot for such officers to be voted by any other electors.

Derivation: L. 1898, ch. 674, § 4.

Former § 503, as amended by L. 1917, ch. 815, repealed; new § 503 added by L. 1918, ch. 208, in effect Apr. 20, 1918.

### § 504. Official envelopes for war ballots.

He shall also cause to be prepared and printed at least twice as many official envelopes as there are voters absent from their election districts, as shown by such general register. Such envelopes shall be gummed, ready for sealing. Upon one side of such enve-

lope shall be printed in substantially the following form the following:

## "OFFICIAL WAR BALLOT

FOR

GENERAL ELECTION, NOVEMBER

(Here insert the date of the election).

Name of voter.....  
 Residence (street and number, if any).....  
 County of .....  
 City or Town of .....

.....  
 Secretary of State."

Upon the other side of such envelope shall be printed the following oath:

### "OATH OF ELECTOR.

"I do swear (or affirm) that I have been a citizen of the United States for ninety days and am now of the age of at least twenty-one years, or will be on the (here insert the date of the election); that I will have been an inhabitant of the state of New York for one year next preceding this election and for the four months preceding such election a resident of the county of....., and am a qualified voter, residing at (street and number, if any)....., in the (city or town of).....; that I am in the actual military (or naval) service of the state of New York or of the United States, and at present attached to..... (here state the particular command to which attached); and that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing, as a compensation or reward for the giving or withholding of a vote at this election, and have not made any promise to influence the giving or withholding of any such vote; and that I have not made or become directly or indirectly interested in any bet or wager depending upon the result of this election; and that I have not been convicted of bribery or any infamous crime, or,

if so convicted, that I have been pardoned and restored to all the rights of a citizen."

.....  
 Voter MUST sign here, and inspector of elections MUST administer and attest oath.

Subscribed and sworn to before me, this .....  
 day of ..... (here insert the date),

.....  
 Inspector of Elections."

If at such election any proposed amendment to the constitution or other proposition or question is to be submitted to the vote of the voters of the state, the secretary of state shall furnish an equal number of ballots for questions so submitted in the form prescribed by section three hundred and thirty-two of this chapter, which shall be properly indorsed, as a war ballot.

Derivation: L. 1898, ch. 674 § 5.

Amended by L. 1918, ch. 298, in effect Apr. 20, 1918.

### § 595. Delivery of official war ballots, poll books and envelopes.

The secretary of state shall cause to be delivered to the commanding officer of every command in which ten or more voters of this state are included, absent from their respective election districts in time of war in the actual military service of this state or the United States in the army or navy thereof, a sufficient number of official war ballots of each kind and official envelopes, at least twice as many as there are such voters in such command; and two poll books for the use of such voters at each poll of each election held under the provisions of this article. Such official war ballots, poll books and envelopes shall be delivered in time for use at the election for which they are prepared, in such manner and by such means as shall in the judgment of the secretary of state be best suited to secure their safe and timely delivery for the use of the voters at the election for which they have been prepared. If the number of voters in any command be less than ten, or voters be detached by military order and absent from their command, the secretary of state shall, when practicable, mail or deliver to

such voters of that description as he may, with reasonable diligence, be able to locate, official war ballots and official envelopes.

Derivation: L. 1898, ch. 674, § 6.

Amended by L. 1918, ch. 208, in effect Apr. 20, 1918.

### § 506. Lists of nominations.

It shall be the duty of each county clerk or board with whom or which certificates of nominations to public office are filed to cause a certified list of such nominations to be forthwith forwarded by mail to the secretary of state, including the name and residence of each nominee together with the title of the office for which he is nominated and the party or other political name specified in such certificates of nomination. It shall be the duty of the secretary of state after the receipt by him of such certified lists of nominations to communicate so far as practicable, to each commanding officer of any command having therein ten or more voters of this state absent from their respective election districts in time of war, in the actual military service of this state or the United States in the army or navy thereof, the name and residence of each person named in any certificate of nomination so certified by a county clerk or filed in the office of the secretary of state, together with the title of the office for which he is nominated and the party or other political name specified in such certificates of nominations; and upon receipt thereof each such commanding officer shall cause such information to be posted in a conspicuous place for the information of such absent voters in his command.

Derivation: L. 1898, ch. 674, § 7.

### § 507. Polls of election.

Polls of an election held under the provisions of this article shall be opened on the day of such election at the quarters of the captain or other commanding officer of any company, troop or other command in the military service of this state or of the United States in the army or navy thereof, if the same be composed in whole or in part of voters of this state. All qualified voters of this state in such command may vote at such poll. Officers and enlisted men, voters of this state, attached to or forming part of the command having therein less than ten such voters, or detached by military order and absent from their command, may vote at such other poll

as may be most convenient for them, or, if any such voter shall have received a ballot and envelope from the secretary of state as provided in section five hundred and five, he may take the oath provided for in section five hundred and four, upon the envelope, before his commanding officer, prepare his ballot, inclosing same in such envelope, fill out the endorsement thereon and mail such envelope or cause it too be mailed or delivered to the secretary of state, who shall include the same in the envelopes to be transmitted to the board of elections of the county in which the voter resides as provided in section five hundred and thirteen. Such board shall transmit the ballot, as provided in such section, to the board of inspectors of the election district in which the voter resides, and the same shall be canvassed, if the voter is a qualified elector.

Derivation: L. 1898, ch. 674, § 8.

Amended by L. 1918, ch. 298, in effect Apr. 20, 1918.

### § 508. Opening of the polls.

Any election held under the provisions of this article shall be held upon the day of the general or special election in this state, or on any secular day within twenty days next prior thereto, such prior day to be fixed by the commanding officer of highest rank in the territory or naval fleet, where the poll or polls for such election shall be held, by proclamation duly made, but such officer need not fix the same day for such election throughout all of the military or naval units of such territory or fleet; provided, however, that if by reason of the exigencies of war such election cannot be held in any of the polls herein provided on the day so fixed, such election may be held on the next day practicable thereafter upon like proclamation of such commanding officer of highest rank; but such election shall not be held later than the day of such general or special election. Such polls shall be opened at such hour of the day as shall be most convenient for such voters and shall remain open not less than three hours and as much longer as shall, in the opinion of the inspectors of election serving at such polls, be necessary in order to receive the votes of all voters of this state entitled to vote at such polls; but no polls shall be kept open later than sunset of the day on which such election shall be held.

The inspectors shall at the opening of such polls make public proclamation of the opening thereof and the time at which such polls shall be closed, and as near as may be, at one hour before



the closing of the polls, public proclamation shall again be made by the inspectors that the polls will be closed at a time certain then proclaimed, which shall be the hour announced in the proclamation made at the opening of the polls. The polls shall not for any reason be kept open after the hour fixed by the first proclamation.

*Derivation:* L. 1828, ch. 674, § 9.

*Amended by* L. 1917, ch. 815; L. 1918, ch. 298, in effect Apr. 20, 1918.

### § 509. Organization of the polls.

At the hour and place herein provided for the opening of the polls, the qualified voters of this state then present shall, by viva voce vote, select four of their own number to act at such election as the inspectors of election thereof. Such inspectors shall, so far as possible, be so selected that they shall equally represent the two political parties of this state which at the last preceding election in this state polled the highest and next highest number of votes respectively. Such inspectors, when so elected, shall choose one of their number as chairman of the board of inspectors by election or by drawing lots. Such chairman shall then administer the oath of office to the other inspectors and one of the other inspectors shall then administer the same to the chairman. The oath to be administered shall be as follows:

"I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of New York, and that I will faithfully discharge the duties of the office of inspector of election according to the best of my ability."

Such oath or affirmation shall be written or printed, or partly written and partly printed, and attached to or entered upon the poll books used at such election, and subscribed by the person taking the same, and certified by the person administering the

Immediately upon the organization of such board of inspectors the commanding officers to whom shall have been delivered any official war ballots, poll books and envelopes shall deliver the same to the inspectors of election of such election and shall take a receipt therefor, which receipt shall be forwarded by mail by such commanding officer to the secretary of state. The said inspectors shall produce and have at the polls, before any votes are taken by them, a box for the reception of the ballots to be voted at such election.

Before proceeding to take any votes they shall open said box and publicly exhibit the inside thereof, and the same shall be entirely empty. They shall then close and securely fasten the same and the said box shall not be opened again until the close of the polls at such election. Each such box shall have an opening in the top thereof for the reception of voted ballots.

The chairman of the board of inspectors shall have charge of the ballot box during the election and shall receive from the qualified voters their envelopes containing ballots and shall deposit them in the ballot box. He shall designate two other inspectors, of opposite political faith, if possible, to keep the poll books of such election. The remaining inspector shall have charge of the official ballots and envelopes and shall deliver the same to the qualified voters entitled to vote at such election.

Derivation: L. 1808, ch. 674, § 10.

#### § 510. Conduct of elections.

The election shall be by ballot. Before any person shall receive an official ballot or be permitted to vote, he shall make and subscribe the oath printed upon the official envelope, as provided by this article, and any member of said board of inspectors is hereby authorized to administer and attest such oath. If any voter shall refuse to take the oath so tendered he shall not be allowed to vote; but if he shall take the oath tendered to him his vote shall be accepted. Upon taking the oath required, the voter shall give to the inspectors keeping the poll books, who shall each enter upon the poll book kept by him, his name and residence by street and number, if any, county and city or town. He shall also give such other information as is required to be entered in such poll book. When such voter gives such information to such inspectors, the inspector having charge of the ballots and envelopes shall write in the proper blank spaces upon such official envelope the name and residence by street and number, if any, of such voter, and the county, and the city or town in which he claims to reside, and shall deliver such ballot or ballots and such envelope, to such voter. Such voter shall then retire to some convenient place and shall prepare his ballots and envelope for voting.

To vote for all the candidates of a party for all offices for which he is entitled to vote in the election district in which he resides,

the voter may make a cross X mark in the circle beneath the emblem of such party. In lieu thereof, he may express his choice of certain persons for certain offices by voting as follows: To so vote for a candidate for an office to be voted for by all the electors of the state, if the name of such candidate be printed upon the ballot, the voter shall make a cross X mark in the voting square to the left of the candidate's name; to so vote for any person, for any such office, whose name is not printed upon the ballot, the voter may write the name of such person in the blank space provided therefor in the proper section after the printed name; to so vote for a person for an office to be voted for by less than all the electors of the state, the voter may write in the blank spaces provided therefor beneath the titles of the proper offices the names of the persons for whom he desires and is entitled to vote. The voter may make a cross X mark in the circle beneath the emblem of a party and also vote, by writing the name or marking a mark in a voting square if any, for a certain person for whom he desires and is entitled to vote, for a particular office, who is not the nominee of such party; and in that case, he shall be deemed to have voted for all of the candidates of such party, for whom he is entitled to vote, except the candidate for an office for which he has expressed his choice by such writing or mark in a voting square, and shall be deemed to have voted for such person for such office; provided, however, that where two or more persons are to be elected to the same office, if the voter writes in the names of one or more persons as his choice therefor or indicates such choice by a mark in a voting square, his vote, as to that office, shall be counted only for the persons whose names are so written or indicated. If the voter shall have marked within a party circle and also indicated by writing or by a mark in a voting square the name of a person as his choice for a particular office and such person be also the candidate of such party for that office, such writing, or mark in a voting square, shall be deemed surplusage and the vote counted for such person. The ballot, if any, for electors of president and vice-president of the United States shall be marked in the same manner as similar ballots used by other electors.

After preparing his ballot and before delivering the same to the chairman of the board of inspectors, the voter shall fold his

ballot in such a way that the contents of the ballot shall be concealed and inclose the same in such envelope which he shall securely seal. He shall then deliver such envelope to the chairman of the board of inspectors; but before such envelope shall be deposited in the ballot box the chairman shall declare from such envelope the name of such voter and his residence by street and number, if any, county and city or town, and if such voter is entitled to vote and such envelope is securely sealed and his name and the other matter hereby required is recorded upon the poll books, the inspector keeping such poll books shall announce the same as correct and shall record such voter as voting. The chairman shall thereupon deposit such envelope containing such ballot or ballots in the ballot box. Any voter so having voted, shall not again be entitled to vote at such election, though present on election day in the election district where he resides.

If, for any cause, the official ballots, poll books and envelopes shall not be provided as required by law at any polling place, upon the opening of the polls for any election thereat, or if the supply of official ballots or envelopes shall be exhausted before the polls are closed, unofficial ballots, poll books and envelopes printed or written, made as nearly as practicable in the form of the official ballot, poll books and envelopes may be used.

Derivation: L. 1898, ch. 674, § 11.

Amended by L. 1917, ch. 815; L. 1918, ch. 298, in effect Apr. 20, 1918.

Ballot in unofficial envelope and without oath, may be counted. People ex rel. Brush v. Schum (1917), 102 Misc. 143, 168 N. Y. Supp. 391.

Intent of voters.—All formalities provided by Election Law need not be applied. People ex rel. Brush v. Schum (1917), 102 Misc. 143, 168 N. Y. Supp. 391.

Residence and age of voter. People ex rel. Brush v. Schum (1917), 102 Misc. 143, 168 N. Y. Supp. 391.

### § 511. Count of the votes.

As soon as the polls of an election are closed, the inspectors of election thereat shall publicly destroy all official envelopes and ballots not voted; and shall then publicly open such ballot boxes and count and ascertain the number of voters voting and not adjourn or postpone the count until it shall be fully completed. The board of inspectors shall commence the count by comparing the two poll books used at such election, correcting any mistakes therein, and by counting the envelopes containing ballots found in

the ballot boxes without opening them, and by comparing the envelopes containing ballots found in such box with the number shown by the poll books to have been deposited therein. The inspectors shall number each voter whose name is recorded in such poll books as having voted beginning with the first name entered therein and numbering the same in consecutive order and shall fill out and sign the certificate required to be made by them as to the whole number voting at such election. If the envelopes containing ballots found in such box shall be more than the number of such envelopes so shown by the poll books to have been deposited therein, the inspectors shall compare the names upon such envelopes with the names recorded in such poll books and all such envelopes so found in said ballot box purporting to have been deposited therein by a voter whose name is not duly entered in such poll books as herein provided, shall with their contents be immediately destroyed, without opening the same; and if more than one such envelope shall be found in said ballot box purporting to have been deposited therein by the same voter, then all such envelopes and their contents purporting to have been deposited in such ballot box by such voter shall be destroyed. No such envelope that has not the official indorsement as herein provided shall be counted.

At the completion of the count the inspectors shall certify the correctness of the same upon the poll books and shall publicly announce the result of such count. The inspectors shall thereupon inclose all such envelopes containing ballots without opening the same, in a sealed package with one of said poll books, and shall direct them to the secretary of state, at Albany, New York, and shall forward the same by mail or express to him as soon as possible after such election. The other of such poll books shall be sealed in an envelope directed to the governor of the state of New York, at Albany, New York and shall be forwarded forthwith to him by mail or express, but by different hands, if possible, from those carrying such envelopes containing ballots and such poll books so directed to be forwarded to the secretary of state, receipts therefor, respectively, being taken by the chairman of the boards of inspectors.

Derivation: L. 1898, ch. 674, § 12.



**§ 512. Returns not to be rejected because of informality of election.**

No mere informality in the manner of carrying out or executing the provisions of this article shall invalidate the election held under the same or authorize the rejection of the returns thereof, and the provisions of this article shall be liberally construed for the purposes herein expressed or intended.

Derivation: L. 1898, ch. 674, § 13.

The mere omission to paste the pastor ballot and the official war ballot together does not invalidate the ballot, where they were folded together. The general provisions of the Election Law with reference to printing and marking ballots apply to soldiers, and they are not excepted by § 512, which relates only to informality in carrying out the law. *People ex rel. Colac v. Smith* (1919), 184 App. Div. 834, 176 N. Y. Supp. 608.

Intent of voters. All formalities provided by Election Law need not be applied. *People ex rel. Brush v. Schum* (1917), 102 Misc. 143, 168 N. Y. Supp. 561.

**§ 513. Disposition of envelopes and ballots.**

1. Upon the receipt by the governor of the poll books of the votes cast at any such election, he shall deliver the same to the secretary of state. The secretary of state shall upon receipt of the packages notify the chairman or any member of the state committees of the parties which at the last election for governor cast the highest and the next highest number of votes for such office, that at a day and hour named therein at his office he will begin opening the packages and comparing the poll books with the envelopes containing ballots received by him and with the poll books, if any, received from the governor. Such notice shall be served personally or by mail directed to the last known place of residence of such person. The secretary of state may proceed with such work from day to day without further notice. He shall forthwith prepare from said poll books and envelopes a separate statement for each county under his official seal in which shall appear all the information hereby required to be entered in such poll books, concerning the voters resident in such county. He shall affix his seal of office to each such envelope and shall transmit such statement with envelopes containing ballots of such voters resident in such county, to the board of elections of each such county, except that in any county within the city of New York such statement and envelopes shall be transmitted to the board of elections of such city taking their receipt for such statement and the number of such envelopes.

2. A statement for each election district, showing the names and residence addresses of all such voters in said election districts, as near as may be, shall be open to public inspection at the office of each such board of elections on and after the fourth Tuesday

following election day. Such statements shall be added to from time to time as names of additional voters are received by such boards of election. Each such statement shall be prepared in duplicate and the duplicate copy thereof shall be mailed immediately to the secretary of state and it shall be open at all times to public inspection at the office of the secretary of state together with all additions made thereto.

3. Such board of elections shall then designate from the duly constituted inspectors of election, in each election district in which any such voter resides as appears from the envelopes, two inspectors of election, one from each political party represented on the board of inspectors of election in the election district, who shall constitute a board of inspectors of election, in their respective election districts, for the purposes hereinafter provided. The board of elections shall also designate one of the two inspectors to be chairman of such board in each election district. The board of elections shall then forthwith give written notice of the receipt of such statement and envelopes and of the designation of such inspectors, including the chairman, to the inspectors of election so designated in each district to which such statements and envelopes respectively relate, by inclosing such notice in a properly sealed wrapper addressed to such inspectors at their respective post-office addresses and by prepaying the postage thereon. Each board of elections, after the receipt of such statements and envelopes, shall notify the chairman or any member of the county committees of the parties which at the last election for governor cast the highest and next highest number of votes for such office in the state, that at a day and hour named therein at his or their office he or they will open the packages containing such statement and envelopes. Such notice shall be served personally or by mail directed to the last known place of residence of such person.

4. It shall be the duty of such board of elections to prepare a statement in like form for each election district in said county in which any such voter shall reside, and to cause such statement with the envelopes containing ballots of voters resident in such election district to be delivered to the board of inspectors of election of each election district at least one-half hour before the board of inspectors of election of said district shall convene for

the purpose of canvassing such votes, as herein provided. All statements provided by this article shall be public records.

5. The board of elections shall also cause to be delivered to the board of inspectors of each election district the poll-book used in the election district for entering the names of civilian voters on the regular day of election within the state, and a copy of the register prepared or revised for such election. Where personal registration was required, the copy of such register and of such poll-book shall be the signature copy. At the same time and in like manner, an assembly district map prepared in accordance with section two hundred and ninety-eight of this chapter shall be delivered to the board of inspectors of election of each election district and such map shall be posted conspicuously in the polling place and remain so posted until the canvass of the ballots has been completed.

In cities and in villages having five thousand inhabitants or more, envelopes containing war ballots which shall have been delivered in error to the wrong election district shall immediately be delivered by the board of inspectors of election to the police and by them to the election officials of the appropriate election district, and in such cities and villages the inspectors shall remain at their respective polling places until twelve o'clock noon so that all such ballots, if any, may be received and canvassed as provided by this chapter. If it is not feasible to deliver any such envelopes to the appropriate election district, such envelopes shall not be opened but shall be rejected and an endorsement of the reason for its rejection shall be made on the back of each such envelope.

6. The board of inspectors in any election district wherein any such ballots are to be canvassed, shall convene, for the purpose of canvassing such votes, at the place where the election was held, at ten o'clock in the forenoon on the sixth Tuesday after the election, in the case of a general election, or, in the case of any other election, on a day to be fixed by the board of elections, which shall not be later than the sixth Tuesday after the election. At least one week before such day, the board of elections shall post in its office and in each branch office a notice specifying the day so fixed and also mail notice thereof to any candidate who shall have previously filed a written request for such notice and to the

chairman or any member of the county committee to whom it is required by this section to give notice of the opening of packages containing statements and envelopes. It shall be the duty of each board of inspectors of election immediately upon their convening as herein provided to open said polls; and the chairman thereof shall publicly read aloud the indorsement contained upon each such envelope. After the reading of each such indorsement, both inspectors shall examine the register and poll-book, furnished as provided in subdivision five of this section, for the purpose of rejecting any envelope bearing the name of a voter who voted within the state, in the election district, at the election; and the signatures, if any, on the poll-book and on the envelope, of a person or persons of the same name, shall be compared. No envelope shall be rejected for such reason unless the identity of the voter whose name is on the envelope and of a person whose name is on the poll-book be established to the satisfaction of both inspectors. If such voter shall be qualified to vote in such election district, the chairman shall then carefully open said envelope and without unfolding or inspecting the contents of such ballot or ballots, shall deposit the same in the ballot box or boxes provided therefor. If any such envelope shall contain more than one ballot for the same officers, amendment or question, all ballots therein shall be rejected. Said board of inspectors shall file all such envelopes with their return in the office of the board of elections. If it shall be determined that for any reason such voter is not qualified to vote in said election district, his envelope shall be rejected, without opening, or, if such disqualification be discovered after the withdrawal of the ballot or ballots from the envelope and before deposit in the ballot box, his ballot or ballots shall be rejected without inspection or unfolding and shall be returned to the envelope. In case of such rejection, the envelope shall be filed as above provided, with an indorsement thereon as to the reason for the rejection; provided, however, that envelopes delivered in error to the wrong election district, in cities and villages having five thousand inhabitants or more, shall be disposed of as provided in subdivision five of this section.

7. If it is impossible to determine the address of the voter, or, if there is no address on the envelope by which the appropriate election district may be determined, or, if the envelope is entirely

blank, such envelope shall not be opened but shall be rejected and an endorsement of the reason for its rejection shall be made on the back of such envelope.

8. All envelopes received by a board of inspectors of election shall be preserved and returned to the board of elections, except such envelopes as may be found to belong in another election district and were forwarded to the proper polling place for such election district and in such event the board of inspectors of election shall make a report to the board of elections indicating thereon the name and address endorsed upon each such envelope and the address of the polling place to which each such envelope was sent and the time it was sent.

Derivation: L. 1909, ch. 674, § 14, as amended by L. 1909, ch. 641, § 1.

Amended by L. 1917, ch. 815; L. 1918, ch. 298, in effect Apr. 20, 1918.

Consolidators' note.—The expression "police board" and "board of police" are made "board of elections" in four places, the supervision of elections in New York city by the police department having been transferred in 1901 to the board of elections.

The inspectors of election are the sole judges of the qualifications of a voter, and where a challenge is made before an envelope is opened and the inspectors overrule the challenge and open the ballot, their decision that the voter is qualified to vote in that election district is final. *People ex rel. Brush v. Schum* (1917), 102 Misc. 143, 168 N. Y. Supp. 391.

Time of transmission of ballots to boards of elections.—The statute being silent as to when the secretary shall transmit said ballots to the boards of elections, leaves him with a wide discretion as to when he shall make such transmission, provided he transmit the ballots in time to have them properly canvassed. Where, upon an application for a writ of peremptory mandamus to compel the secretary of state to forthwith transmit to the various counties in the city of New York the official war ballots above mentioned, it appears that all of such ballots have not yet been received by him and that it is his purpose to transmit all such ballots as soon as he can, not later than December 10, 1917, and it also appears that he has voluntarily furnished to the board of elections in New York city an unofficial tabulated statement containing all the information indorsed upon the envelopes containing such ballots, and it is not shown that he has omitted to discharge any duty imposed upon him by law in respect to them, the application will be denied. *Matter of Hoyle v. Hugo* (1917), 101 Misc. 637, 108 N. Y. Supp. 789.

Canvass of votes cast by absent soldiers. Report of Atty.-Gen. (1908). 285.

### § 514. Canvass by inspectors of election.

After all such ballots shall have been cast, said board of inspectors of election shall immediately proceed to canvass the same as provided by law, except that no ballot shall be rejected as void where the intent of the voter is clearly apparent and except that



after the tally has been once completed, as provided in section three hundred and sixty-eight, the ballots shall be examined and the votes thereon announced by the inspector who kept the tally sheet and at the same time the chairman shall examine and check the tally sheet as the vote is announced. After making any necessary change in the tally sheet, and otherwise proving the tallies in the manner provided in article ten, such board shall make a statement and return of the canvass as provided by law and forthwith forward the same to the board of elections by one of the inspectors or by registered mail or express. The expense of such mailing or expressing incurred by an inspector shall be added to his account for services as inspector and repaid by the town or city. If such statement and return are delivered to the board of elections by an inspector in person he shall not receive any compensation or mileage therefor or be allowed expenses in connection therewith.

**Derivation:** L. 1898, ch. 974, pt. of § 15, as amended by L. 1899, ch. 58, § 1.

**Amended by** L. 1917, ch. 815, in effect Aug. 29, 1917.

Where jurat lacks name of inspector and the day of the month the ballot will not be declared void. *People ex rel. Fiske v. Inspectors of Election* (1917), 102 Misc. 136, 168 N. Y. Supp. 398.

**Intent of voters.**— *People ex rel. Fiske v. Inspectors of Election* (1917), 102 Misc. 136, 168 N. Y. Supp. 398.

The determination of the question of intent is one of fact, and the power to pass thereon is lodged with the inspectors of election. Where, in an election conducted at a military camp, one ballot was voted for mayor in the blank space for city chamberlain and another in the space for superintendent of the poor, and it appears that there was no vacancy to be filled for the office of superintendent of the poor, and that the city had no such officer as city chamberlain, the local inspectors of election were justified in finding that such ballots were valid and could be counted for mayor. The intent of the voter should be gathered from the face of the ballot itself, and the local inspectors cannot be governed by extrinsic evidence or by affidavits. A ballot on which the voter had twice written his name and address, stating that he voted "the Democratic ticket," was also properly counted. Such ballot is not in contravention of the Constitution because so marked. Section 1 of Article 2 of the Constitution, securing the vote to soldiers and sailors in actual service, does away with objections which might otherwise render the ballots in question void. *Matter of Fiske* (1918), 191 App. Div. 706, 168 N. Y. Supp. 779, *aff'd* 222 N. Y. 687.

### § 515. Canvass by county board.

The county board of canvassers or such other board as perform like duties, shall convene not later than the seventh Thursday after the election day, at their usual place of meeting, at one o'clock in

the afternoon for the purpose of canvassing such statements and returns.

At such meeting of the county or other canvassing board the said board shall proceed to canvass such statements and returns of the respective election district boards of inspectors and shall from such statements and returns, together with the statements and returns theretofore made of such election, make new and separate statements of the votes cast in such county or any part thereof, and shall complete their canvass and make the statements provided for by section four hundred and thirty-seven of this chapter, and they shall not, until such meeting, determine the result of the election, anything now provided by law to the contrary notwithstanding. But nothing herein shall prevent any county board of canvassers from proceeding as provided by this chapter except as to such final determination. Such meeting or meetings of the board of county canvassers shall be deemed a continuation of its regular session.

Derivation: L. 1898, ch. 674, pt. of § 15, as amended by L. 1899, ch. 58, § 1, and § 18.

Amended by L. 1918, ch. 298, in effect Apr. 20, 1918.

#### § 516. Canvass by state board.

If any such new statements shall be made by a county board after the time fixed by law for the canvass of the regular statements of the county boards by the state board of canvassers, the state board of canvassers shall convene upon notice by the secretary of state and shall proceed to canvass such new statements of a county board, and their original canvass, if any, shall be corrected accordingly; and the state board of canvassers shall cause a determination of such result to be made in accordance with such new statements. And they shall not, until such meeting, determine the result of the election, anything now provided by law to the contrary notwithstanding.

Derivation: L. 1898, ch. 674, § 17.

#### § 517. Returns or statements not made and filed prior to certain dates in any year not to be canvassed.

No statement, as provided by this article, which shall not have been duly made and filed by a county board of canvassers prior to the twenty-ninth day of December next succeeding such election in any year, shall be canvassed or affect the result of such an elec-

tion; and no return or statement not received by a county board of canvassers at their meeting herein provided for, shall be thereafter canvassed, or affect the result of such election.

Derivation: L. 1898, ch. 674, § 18.

**§ 518. Provisions of penal law relating to crimes against the elective franchise to apply.**

All the provisions of the penal law relating to crimes against the elective franchise shall be deemed to apply to all elections held under the provisions of this article, and any person who shall violate any such provisions may be indicted at any time in any county of this state and may be fined or imprisoned or both so fined and imprisoned upon conviction thereof whenever found in this state.

Amended by L. 1909, ch. 240, in effect Apr. 22, 1909.

Derivation: L. 1898, ch. 674, § 19.

**§ 519. Filling vacancies in the office of inspector of elections.**

It shall be lawful for a majority of the inspectors of election provided for by this article to execute all the trusts and duties required to be executed by the inspectors herein provided for. And if for any cause, after the inspectors of election hereinbefore provided for shall have been chosen, any of the said inspectors shall permanently absent himself from the place of holding such election, or shall for any cause be obliged permanently to leave the place of holding such election, the remaining inspectors, or on their default the voters present, may fill such vacancy, preserving, if possible, the bipartisanship of such board; and any person so appointed to fill such vacancy shall take the oath of office and shall thereupon continue with the other inspectors to perform the duties of such office at such election to the end thereof.

Derivation: L. 1898, ch. 674, § 20.

**§ 520. Elections may be contested.**

All elections held under this article shall be subject to contest and inquiry in the same manner as elections held within this state. The sealed packages of voted ballots shall be held inviolate in the office in which they are filed, subject to the order of a court of com-

patent jurisdiction and may upon such order of such court be opened and canvassed.

Derivation: L. 1898, ch. 674, § 21.

This section does not take away the safeguards for the correction of errors, but merely declares that soldiers' and sailors' elections may be contested like other elections by citizen voters. *Peo. ex rel. Fiske v. Bantz* (1918), 181 App. Div. 702, 166 N. Y. Supp. 905, aff'd 222 N. Y. 676.

• § 521. General provisions concerning elections to apply.

The several officers or persons authorized by the provisions of this article to conduct the elections held by virtue hereof shall have the like powers, and they, as well as other persons who may be candidates for office at such election, or who may attend such election, or may vote or offer to vote at such election, shall be subject to the like penalties and restrictions as are declared and provided by law in case of elections within this state, and all provisions of this chapter, as far as applicable and not inconsistent with the provisions of this article, shall apply to elections held under this article.

Derivation: L. 1898, ch. 674, § 22.

§ 522. Synopsis of this article to be published and distributed.

The secretary of state shall whenever necessary cause a brief synopsis of the provisions of this article and such extracts therefrom as he may deem suitable, to be published in pamphlet form, properly indexed, and shall cause the same to be, as generally as may be, circulated among the voters of this state absent from their respective election districts in time of war in the actual military service of this state or of the United States, in the army or navy thereof.

The secretary of state shall also provide in addition to the necessary official ballots, poll books and envelopes, such other blank forms, envelopes, instructions to voters, and other stationery for use at each poll of any election held under this article, as may be necessary for the proper conduct of such election, and shall transmit them to the proper place and to the proper persons in ample time for their safe delivery and use at such election. He may order or purchase any of the printing and supplies required by this

article wherever he deems it desirable for the best interests of the state. He shall also provide for the return of such poll books, envelopes and ballots of such election to him at the expense of this state.

Derivation: L. 1896, ch. 674, § 23.

Amended by L. 1918, ch. 323, in effect Apr. 24, 1918.



# ARTICLE 15-A.

[Article added by L. 1920, ch. 875, in effect May 20, 1920.]

## ABSENTEE VOTERS.

### Section 523. Right of absentee voters to vote.

524. Application for ballots.
525. Determination of absentee voter's application for ballot; delivery of ballot.
526. Preparation of lists of candidates.
527. Preparation and printing of ballots; names of certain candidates to be printed.
528. Form of absentee voter's ballot.
529. Envelopes.
530. Method of voting.
531. Delivery of absentee voter's envelopes to the inspectors; canvass.
532. Objections to qualifications of absentee voter.
533. Judicial review of qualifications of voter.
534. Clerks' duties and ballot clerks' returns.
535. Duty of voter who is within the county on election day.
536. Ballot boxes to be provided where voting machines are used; canvass.
537. Preservation of envelopes and ballots.
538. Penalties.
539. General provisions concerning elections to apply.

### § 523. Right of absentee voters to vote.

Subject to the provisions of this article, a qualified voter who, on the occurrence of any general election, may be unavoidably absent from the state or county of his residence on such day, because his duties, occupation or business require him to be elsewhere within the United States, may vote, and his vote shall be canvassed in the manner hereinafter provided.

Added by L. 1920, ch. 875, in effect May 21, 1920.

### § 524. Application for ballots.

A qualified voter desiring to vote at a general election under the provisions of this article shall make, and shall mail or deliver to the board of elections of the county or city in which he resides, his affidavit setting forth as follows: his name and residence address, which shall include the name of the county and of the city, town

article wherever he deems it desirable for the best interests of the state. He shall also provide for the return of such poll books, envelopes and ballots of such election to him at the expense of this state.

Derivation: L. 1898, ch. 674, § 23.

Amended by L. 1918, ch. 323, in effect Apr. 24, 1918.

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A qualified voter desiring to vote at a general election under the provisions of this article shall make, and shall mail or deliver to the board of elections of the county or city in which he resides, his affidavit setting forth as follows: his name and residence address, which shall include the name of the county and of the city, town

o. village, and the street or avenue and number, if any, or a brief description of the locality if his residence cannot be described by street or avenue and number; that he is a qualified voter of the election district in which he so resides; a statement that he expects to be unavoidably absent from the state or county of his residence on the day of the next general election because his duties, occupation or business require him to be elsewhere within the United States on such day; a brief description of his business or occupation, or of the duties, which require such absence; a statement of the special circumstances by which such absence is required, unless such duties, occupation or business are of a nature to ordinarily require absence from the state or county or to ordinarily require traveling beyond the boundaries of the state or county, which shall include among others the following: employee in the operation of railroad trains, when the railroad or the run of such employee crosses the boundary of the county, commercial traveler, actor, and federal employee having an office or position outside of the county; a statement that the affiant applies in good faith for an absentee voter's ballot or set of ballots, as the case may be. The affidavit shall be subscribed by the voter if he is able to write, and if he is unable to write that fact must be stated in the affidavit. Authentication of the signature, authority and official character of the officer before whom the affidavit purports to have been taken shall not be necessary when the affidavit is taken within the state; nor when it is taken without the state before a notary public, with seal, if his seal be affixed.

Added by L. 1920, ch. 375, in effect May 21, 1920.

**§ 525. Determination of absentee voter's application for ballot: delivery of ballot.**

To entitle such an applicant to a determination by the board of elections of his right to receive an absentee voter's ballot or ballots, the application must be received by the board not later than the seventeenth day before the general election. An application received after that time shall not be considered. Upon the due receipt of any such application, the board shall first examine the register to ascertain whether the applicant is duly registered for such election in the election district containing his residence, as stated in his affidavit. If the election district be one in which

registration is required to be personal, the board shall compare the signature, if any, on the register with that of the applicant, on his affidavit. Before delivering any absentee voter's ballot, in compliance with the application, the board shall determine whether the applicant has been duly registered and also whether he is a legally qualified voter. In determining the latter fact, the board may make such inquiry concerning the matter as it deems proper, and if the facts, as found by the board, show that the applicant is not a legally qualified voter in such election district, it shall reject the application. If a deputy superintendent of elections shall file with the board of elections his affidavit that he did visit and inspect the premises claimed by the applicant as his residence, and he interrogated an inmate, house-dweller, keeper, caretaker, owner, proprietor or landlord thereof or therein as to the said applicant's residence therein or thereat, and that the said affiant was informed by one or more of such persons, naming them, that they were acquainted with and knew the persons residing therein or thereat and that the applicant did not reside at said premises thirty days before the election, such affidavit shall be sufficient authority for a determination by the board that the applicant is not entitled to an absentee voter's ballot; but this provision shall not preclude the board from making such determination as the result of its own inquiries and without resorting to such affidavit. The board shall keep a record of applications, as they are received, for absentee voters' ballots, showing the names and residences of the applicants. Such record shall be open to public inspection during office hours; and as soon as practicable after the seventeenth day before the general election the board shall give to the chairman of the county committee of each party a list of all applicants to whom absentee voters' ballots have been delivered.

Except in the case of the occupations specifically enumerated in the preceding section, the board shall also determine whether the duties, occupation or business of the applicant, as set forth in his affidavit, are of a nature to ordinarily require absence from the state or county or to ordinarily require traveling beyond the boundaries of the state or county, and shall determine, if they are found to be not of such a nature, whether the special circumstances, as set forth in the affidavit, are sufficient. If it be found that the



applicant is duly registered in the election district containing his residence, as stated in his affidavit, and if the board shall also determine that he is a qualified voter and that his affidavit is sufficient, it shall deliver to the applicant, in the manner hereinafter provided, one absentee voter's ballot or set of ballots, the envelope therefor and a list, provided for in this article, of certain candidates for public office. Such ballot or set of ballots, envelope and list shall be delivered at the office of the board of elections to the applicant in person or, if he shall have so requested, to a member of his family, except that if the applicant shall have so requested, the board shall mail such ballot or set of ballots, envelope and list to the applicant at any address in the United States designated by him. The ballot or ballots, envelope and list, for an absentee voter, shall be ready for delivery at such office, or shall be mailed, promptly after the ballots shall have been printed and the board has determined the right of the voter to obtain the ballot or ballots.

Added by L. 1920, ch. 875, in effect May 21, 1920.

#### § 526. Preparation of lists of candidates.

The board of elections of each county, and of the city of New York, at least seventeen days before any general election, shall cause to be printed, for the use of absentee voters residing in any assembly district within the county or such city, a list of all nominated candidates, so far as known, for offices to be filled at such election in any political subdivision within the county or city, except offices as to which the names of nominated candidates are required by this article to be printed upon an absentee voter's ballot. The list provided for by this section shall contain the names, places of residence and business of the respective candidates, together with the titles of the offices for which and the names of the parties or independent bodies by which they were nominated, respectively; also the number of persons to be elected to each office. In the city of New York and in any county containing more than one assembly district, the list shall be classified by assembly districts. If any political subdivision shall be located partly in each of two or more assembly districts, the names of the candidates for election in such political subdivision shall be printed in connection with the names of candidates within each such assembly district;

and in such case there shall be a note or memorandum showing the election districts within the assembly district whose voters are entitled to vote for such candidates.

Added by L. 1920, ch. 875, in effect May 21, 1920.

**§ 527. Preparation and printing of ballots; names of certain candidates to be printed.**

At least seventeen days before a general election, the board of elections of each county, and of the city of New York, shall cause to be prepared and printed as many official ballots for absentee voters as it may deem necessary. Ballots shall be so prepared and printed for absentee voters residing in each assembly district in the county or such city and shall contain the names of all nominated candidates, so far as known, to be voted for by all the voters of such assembly district; and where a city is wholly within an assembly district, or an assembly district is partly within and partly outside of a city, if there are any city officers to be elected who may be voted for by all the voters of the city, separate ballots shall be prepared and printed for absentee voters of such assembly district residing within and outside of the city, respectively, in such manner that the ballots for voters residing within the city shall contain the names of all nominated candidates, so far as known, to be voted for by all the voters of such district and of such city.

Added by L. 1920, ch. 875, in effect May 21, 1920.

**§ 528. Form of absentee voter's ballot.**

The names of candidates whose names are required by the foregoing section to appear upon the ballot shall be printed in appropriate sections, with titles of offices, section numbers, emblems, voting squares, names of parties and political organizations and blank spaces for writing in names of candidates, as provided for the regular official ballots. Following such matter, in as many columns as may be necessary, there shall be printed the titles, as near as may be, of all offices to be filled at such election, except offices as to which the names of nominated candidates are required by the foregoing section to be printed. The offices shall be classified by appropriate descriptions, such as ward or town offices, using appropriate descriptions for other classes, if any. The title of

each class shall be printed above the titles of offices in such class. Below the titles of each such office shall be a space or spaces for writing in the name or names of the person or persons for whom the voter desires to vote. Approximately, one-half inch shall be allowed for the title of each class of offices and one-half inch space for the title of an office and writing in the name of a person as the voter's choice for such office. Except as to the spacing, such offices and titles shall be printed substantially as follows:

#### WARD OFFICES.

For supervisor of the ..... ward of the city of (name of city to be printed if there is a separate ballot for any city officers).

.....  
For alderman of the ..... ward of the city of (name of city to be printed if there is a separate ballot for any city officers).

#### TOWN OFFICES.

For supervisor of the town of (name of town to be written or stamped in by the board).

.....  
For justice of the peace, town of (name of town to be written or stamped in by the board).

.....  
Before delivering or mailing the ballot to the voter, the board of elections shall complete the description of the office by writing or stamping in the name of the proper town, or number of the ward, or otherwise.

At the head of the ballot shall be printed the following instructions:

" 1. To vote for a candidate whose name is printed on this ballot, make a single cross X mark in a blank square to the right of an emblem opposite his name.

2. To vote for a candidate whose name is not printed on this ballot write his name on a blank line under the names of candidates, or under the title of the office if the names of any candi-

dates for that office are not printed. In such cases consult the list of candidates to see how many persons are to be elected to such office.

3. Mark only with a pencil having black lead.

4. Any other mark or any erasure on this ballot is unlawful."

When electors of president and vice-president of the United States are to be elected, a separate ballot therefor, in the same form as the ballot for such officers to be voted by other voters, shall be prepared at least seventeen days before the election for such absentee voters.

If at any general election any proposed amendment or amendments to the constitution or any proposition or question is to be submitted to the vote of all of the voters of the state, the board of elections shall cause to be prepared, at least seventeen days before the election, such number of ballots as it may deem necessary for absentee voters in the form prescribed by section three hundred and thirty-two of this chapter.

On the back of any ballot prepared pursuant to this section shall be printed the words "Official Ballot, Absentee Voters," followed by a word or words generally descriptive of the ballot, such as "General Officers," "Presidential Electors," "Constitutional Amendments and Propositions."

Added by L. 1920, ch. 875, in effect May 21, 1920.

### § 529. Envelopes.

The board of elections also shall provide envelopes, to a sufficient number, for absentee voter's ballots. On one side of such envelope shall be printed the following:

"OFFICIAL BALLOT, ABSENTEE VOTER,  
for

GENERAL ELECTION, NOVEMBER . . . . ., 19 . . .  
Name of voter . . . . .  
Residence (street and number if any) . . . . .  
County of . . . . . assembly district  
(if the county contain more than one).  
City (or town) of . . . . .  
Ward . . . . .  
Election district . . . . .

(Signature of absentee voter.)"

The date of the election, name of the county, number of assembly district, if any, and name of a city, if there be a separate ballot for city voters, shall be printed, and the name of voter, residence, name of town, number of ward and election district shall be written or stamped in by the board of elections.

On the reverse side of such envelope shall be printed the following oath:

" OATH OF ABSENTEE VOTER.

I do swear (or affirm) that I will have been a citizen of the United States for ninety days and will be at least twenty-one years of age on the ..... day of ....., 19.... being the date of the next general election; that I will have been an inhabitant of the state of New York for one year next preceding the election and for four months preceding such election a resident of the county of ..... and am a qualified voter residing at ..... (street and number, if any) in the city or town of .....; that I will be unavoidably absent from the state or county of my residence because of duties, occupation or business which requires me to be elsewhere in the United States on the day of election; that I have not qualified nor do I intend to vote elsewhere than as set forth on the reverse side of this envelope and that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing, as a compensation or reward for the giving or withholding of a vote at this election, and have not made any promise to influence the giving or withholding of any such vote; and that I have not made or become directly or indirectly interested in any bet or wager depending upon the result of this election; and that I have not been convicted of bribery or any infamous crime, or, if so convicted, that I have been pardoned and restored to all the rights of a citizen.

....."

Voter must sign here, and notary public, or other officer author-

ized by law to administer an oath, must administer and attest oath.

Subscribed and sworn to before me, this .....

day of ..... (here insert the date)

at .....

.....,

Notary Public,

County of ....., state of .....

The envelope provided for in this section shall be gummed, ready for sealing, and in addition to the foregoing matters the board of elections shall cause to be printed thereon, on the side opposite the oath, instructions as to the duties of the voter after the marking of the ballot, which instructions shall include a specific direction as to the time within which the envelope must reach the office of the board of elections in order that his vote may be canvassed.

Added by L. 1920, ch. 573, in effect May 31, 1920.

#### § 530. Method of voting.

The absentee voter, at any place within or without the state, but within the United States, may mark an official ballot, provided for in this article, as follows: Where the office for which the voter desires and is lawfully entitled to vote for a person is one under whose title the names of any candidates are printed, he may vote for such person in the manner prescribed by section three hundred and fifty-eight. To vote for a person or persons for any other office, if he is lawfully entitled to vote for a person for that office, the voter may write in the blank space beneath the title of the office the name or names of the person or persons for whom he desires to vote, not exceeding the number to be elected to that office. He shall also fill the necessary blank spaces to complete the title of the office, if the board of elections has omitted to do so. After marking the ballot, he shall fold it and inclose it in the envelope and seal the same. He shall make no mark or writing whatsoever upon the ballot, except as above prescribed, and shall see that it bears no such mark or writing. He shall make no mark or writing whatsoever on the outside of the ballot. Where two or more kinds of ballots are voted, they shall all be so inclosed in the envelope. He shall then take and subscribe the oath on the en-



velope, with blanks properly filled in. The envelope, containing the ballot or ballots, shall then be mailed or delivered to the board of elections of the county or city of his residence.

Added by L. 1920, ch. 875, in effect May 31, 1920.

**§ 531. Delivery of absentee voter's envelopes to the inspectors: canvass.**

The board of elections shall cause all such envelopes which are actually received not later than twelve o'clock noon on the Friday before the election to be marked with the day and hour of the receipt thereof and assorted according to election districts. Such envelopes shall be delivered unopened to the boards of inspectors of the proper election districts with the other ballots and supplies for such election, at the time and in the manner provided in section three hundred and forty-three.

Immediately after the closing of the polls, and before preparing for the canvass pursuant to article ten, the inspectors of election in each election district where any absentee voters' envelopes are received shall examine such envelopes and registers. In election districts where registration is required to be personal, they shall compare the signature, if any, on each envelope with the signature, if any, on the register, of the person of the same name who registered from the same address. If the signatures are found to correspond, an entry to that effect shall be made in the proper column of the register, as though the voter voted in person, as provided in section three hundred and fifty-five. In any election district, if an inspector shall know or suspect that the person whose signature is on any such envelope is not a qualified voter in such election district or was within the county on the day of election while the polls were open, and not entitled to vote the ballot or ballots, it shall be his duty to object to the opening of the envelope and to the casting of the ballot or ballots contained therein. If a person whose signature is on any such envelope has already voted in person at the election in such election district, or if his name and residence, as stated on the envelope, is not on the register, his envelope shall be laid aside unopened and be returned unopened to the board of elections. If such person has not so voted in person, and appears to be registered, and if no objection be made, or if an objection be made and not sustained as provided in the next sec-

tion, the envelope shall be opened and the ballot or ballots withdrawn and deposited unopened in the proper box or boxes. At the time of the deposit of an absentee voter's ballot or ballots, the words "absentee vote" shall be written in the poll-book, or poll-book section of the register, opposite the name of the voter, in the "remarks" column, in lieu of entries as to ballot numbers. The ballots so deposited shall be canvassed at the same time and in the same manner as provided for the canvass of other ballots.

Added by L. 1920, ch. 873, in effect May 31, 1920.

### § 532. Objections to qualifications of absentee voter.

After the close of the polls, an inspector or any other person present in the polling place may object to the voting of the ballot or ballots contained in any envelope upon the ground or grounds that the person whose signature is upon such envelope is not a qualified voter in such election district or was within the county while the polls were open and not entitled to cast such ballot or ballots. The board shall proceed forthwith to determine such objection and may take proof thereon. Unless the board, by majority vote, shall sustain the objection, the chairman, or if he refuse, another inspector shall endorse upon the envelope the objection and the words "not sustained," and shall sign such endorsement, and the envelope shall thereupon be opened and the ballot or ballots deposited as provided in this article as though no objection had been made thereto. Should the board, by majority vote, sustain such objection, the objection and the word "sustained" shall be similarly endorsed upon the envelope and the envelope shall not be opened nor the ballots therein canvassed. Such envelope shall be returned unopened to the board of elections with the other returns of the election.

Added by L. 1920, ch. 873, in effect May 31, 1920.

### § 533. Judicial review of qualifications of voters.

A person whose ballot or ballots shall be rejected as provided in the preceding section, or any candidate whose name lawfully appears upon any such ballot, may apply to the supreme court forthwith or within twenty days after the election for an order to determine the question raised by the objections made thereto. The court shall prescribe what and to whom notice of such application

shall be given. If the court shall reverse the decision of the board of inspectors thereon, it shall direct the counting and canvass of such ballots. The order therefor shall provide that the envelope containing such ballots and any others in the same election district similarly circumstanced shall be opened, the ballots therein cast and counted as though no objection had been made thereto, and the canvass in such election district shall be corrected accordingly. Boards of inspectors of election districts and boards of canvassers shall continue in office for the purposes of such proceedings.

Added by L. 1920, ch. 875, in effect May 21, 1920.

### § 534. Clerks' duties and ballot clerks' returns.

When an envelope shall be opened for the purpose of removing and casting the ballot or ballots therein, if one or more of the different kinds of ballots to be voted at the election are not found therein, a memorandum showing the kind of each ballot missing shall be made by the ballot clerks, or general clerks acting as ballot clerks, and the total number of each kind missing shall be ascertained before the preparation of the ballot clerks' returns. The ballots and stubs referred to in the form contained in section three hundred and thirty-five shall be deemed to mean only the regular ballots supplied for the use of voters who vote in person. A separate form of ballot clerks' return, applying only to absentee voters' ballots of each kind, shall be provided by the board of elections. Such return shall show, in the following order, the number of envelopes received, the number of envelopes unopened and the number of envelopes opened. Below the number of envelopes opened shall be stated the number of ballots, of the kind for which the return is made, which were not found in the envelopes opened. Provision shall be made for the deduction of such missing ballots from the number of envelopes opened, and the remainder shall be stated as the number of ballots remaining to be accounted for in the ballot box. The affidavit of the clerks, to follow such statement, shall be only to the effect that the "foregoing is a correct return of the absentee voters' envelopes and ballots delivered to us for the election."

In preparing for the canvass, by comparing the number of ballots found in each box with the number shown by the ballot clerks' returns to have been deposited therein, as provided in section three

hundred and sixty-seven, the number of ballots remaining to be accounted for in the ballot box, as shown by the ballot clerks' returns, shall be determined by adding together the number so stated in the ballot clerks' return of regular ballots and their return of absentee voters' ballots.

**Added by L. 1920, ch. 875, in effect May 21, 1920.**

**§ 535. Duty of voter who is within the county on election day.**

If a voter who shall have mailed or delivered an absentee voter's ballot to the board of elections is within the county of his residence on the day of the election, at any time between the opening and closing of the polls, he shall immediately notify or make diligent effort to notify the inspectors of election of the election district in which he resides of the fact of his presence in the county.

**Added by L. 1920, ch. 875, in effect May 21, 1920.**

**§ 536. Ballot boxes to be provided where voting machines are used; canvass.**

In election districts where voting machines are used, a ballot box or boxes shall be provided by the proper authorities for the reception of absentee voters' ballots deposited pursuant to this article. In such districts, such ballots shall be canvassed in the same manner, so far as practicable, that ballots are canvassed in other election districts, so far as consistent with this article, and the votes counted for a person, upon such canvass, shall be added to those cast for such person according to the machine and shall be included in the returns.

**Added by L. 1920, ch. 875, in effect May 21, 1920.**

**§ 537. Preservation of envelopes and ballots.**

It shall be the duty of the board of inspectors to preserve all envelopes containing the oaths of absentee voters and deliver the same to the board of elections at the time of delivery of the ballot boxes. Such envelopes shall be held by the board of elections for a period of two years after election. Such envelopes shall at all times be open to public inspection.

**Added by L. 1920, ch. 875, in effect May 21, 1920.**

**§ 538. Penalties**

Any person who shall make or cause to be made any material false statement in connection with his application to vote as an

absentee voter, or who shall vote or attempt to vote, under the provisions of this article, by fraudulently signing the name of another upon any envelope provided for in this article, or who not being a qualified voter and having knowledge or being chargeable with knowledge of that fact, shall attempt to vote under this article, and any person who shall do or attempt to do, or who doing or attempting to do, a fraudulent act in connection with any vote cast or to be cast or attempted to be cast under the provisions of this article, shall be guilty of a felony, and upon conviction shall be punishable by imprisonment for not less than one year nor more than five years.

An officer or other person who intentionally opens an absentee voter's envelope or examines the contents after the receipt of the envelope by the board of elections and before the close of the polls at the election shall be guilty of a misdemeanor.

Added by L. 1920, ch. 875, in effect May 21, 1920.

**§ 539. General provisions concerning elections to apply.**

All provisions of this chapter, so far as applicable and not inconsistent with the provisions of this article, shall apply to the taking of the votes of absentee voters under this article.

Added by L. 1920, ch. 875, in effect May 21, 1920.

# ARTICLE 16.

## CORRUPT PRACTICES.

### Section 540. Political committee defined.

- 541. Statement of campaign payments not made through political committee.
- 542. Personal expenses defined.
- 543. Treasurer of political committee.
- 544. Accounting to treasurer or candidate.
- 545. Vouchers.
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- 548. Filing and preserving statements.
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- 560. Judgment and penalty.
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- 562. Party funds not to be expended for primary purposes.

### § 540. Political committee defined.

The term "political committee," under the provisions of this article, shall apply to every committee or combination of three or more persons co-operating to aid or to promote the success or defeat of a political party or principle, or of any proposition submitted to vote at a public election or to aid or take part in the election or defeat of a candidate for public office; or to aid or take part in the election or defeat of a candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of a candidate for any office whether public or not to be voted for at a primary election; or to aid or defeat the nomination by petition of a candidate under the primary election law; but nothing in this article contained shall apply to or in respect of any committee or organization for the discussion or advancement of political questions or principles without connection with any election.

Derivation: Election Law, § 200, as added by L. 1906, ch. 502, § 1, amended by L. 1910, ch. 429, in effect June 8, 1910.

A political committee exists wherever three or more persons co-operate to bring about the election or defeat of a candidate or a proposition at an election, and if they make any expenditure of money in so doing they must report their receipts and disbursements. Matter of Woodbury (1916), 174 App. Div. 569, 180 N. Y. Sup. 902.

### § 541. Statement of campaign payments not made through political committee.

Any person, including a candidate, who to promote the success or defeat of a political party, or to aid or influence the election



or defeat of a candidate or candidates for public office; or to aid or influence the election or defeat of a candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of a candidate for any office whether public or not to be voted for at a primary election, or to aid, influence or prevent the nomination of a candidate by petition under the provisions of the primary election law, directly or indirectly, himself or through another person, shall give, pay, expend or contribute, or shall promise to give, pay, expend or contribute, any money or other valuable thing except to the chairman, treasurer or a member of a political committee, or to an agent duly authorized thereto in writing by such committee, or to a candidate or an agent of such candidate authorized by the candidate thereto in writing, or except for personal expenses as hereinafter provided, shall file a statement required by section five hundred and forty-six, and shall be subject to all the duties by this chapter required of a political committee or the treasurer thereof.

**Derivation:** Election Law, § 201, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 1; amended by L. 1910, ch. 429, in effect June 8, 1910.

**Filing of statement of expenses by candidates.** Report of Atty.-Gen. (1906) 285.

### § 542. Personal expenses defined.

A candidate for election to a public office, or to any office whether public or not to be voted for at a primary election; or for nomination at a primary election or convention; or for nomination by petition under the provisions of the election law, and any other person, may incur and pay, in connection with such election, his own personal expenses for traveling and for purposes properly incidental to traveling; for writing, printing and preparing for transmission any letter, circular or other publication not issued at regular intervals, whereby he may state his position or views upon public or other questions; for stationery and postage; for telegraph, telephone and other public messenger service; but all such expenses shall be limited to those which are directly incurred and paid by him. A candidate shall in any event file a statement of any contributions made by him.

**Derivation:** Election Law, § 202, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 2; amended by L. 1910, ch. 429, in effect June 8, 1910.

**§ 543. Treasurer of political committee.**

Every political committee shall have a treasurer, and shall cause him to keep detailed accounts of all money or its equivalent, received by or promised to, and of all expenditures, disbursements and promises of payment or disbursement made by the committee or any of its officers or members or by any person acting under its authority or in its behalf. No member thereof or other person acting under its authority or in its behalf shall receive any money or its equivalent, or expend or disburse the same until the committee shall have chosen a treasurer. There shall be filed in the office of the secretary of state within five days after the choice of a treasurer a statement signed by at least three members of such committee giving the name and address of the treasurer chosen.

**Derivation:** Election Law, § 203, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 3.

**Consolidators' note.**—The word "distribution" is changed to "disbursement," as being an obvious clerical error. The change restores the original phraseology and effects an agreement with the rest of the section.

**§ 544. Accounting to treasurer or candidate.**

Whoever, acting as an officer or member or under the authority of a political committee, or under the authority of a candidate for public office; or for any office whether public or not to be voted for at a primary election; or for nomination at a primary election or convention; or for nomination by petition under the provisions of the election law, receives any money or its equivalent, or promise of the same, or expends or incurs any liability to pay the same, shall, within three days after demand, and in any event within fourteen days after such receipt, expenditure, promise or liability, give to the treasurer of such committee, or to such candidate if an agent authorized by him, a detailed account of the same, with all vouchers required by this article, which shall be a part of the accounts and files of such treasurer or such candidate.

**Derivation:** Election Law, § 204, as added by L. 1906, ch. 502, § 1; amended by L. 1910, ch. 429, in effect June 8, 1910.

**§ 545. Vouchers.**

Every payment required to be accounted for shall, unless the total expense payable to any one person be not in excess of five dollars, be vouched for by a receipted bill stating the particulars of expense, and every voucher, receipt or account hereby required,

shall be preserved for fifteen months after the election to which it relates.

**Derivation:** Election Law, § 205, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 4.

### § 546. Statement of campaign receipts and payments.

The treasurer of every political committee which, or any officer, member or agent of which, in connection with any election receives, expends or disburses any money or its equivalent or incurs any liability to pay money or its equivalent shall, within twenty days after such election, file a statement setting forth all the receipts, expenditures, disbursements and liabilities of the committee, and of every officer, member and other person in its behalf. In each case it shall include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement, the name of the person or committee to whom it was made, and the date thereof; and unless such expenditure or disbursement shall have been made to another political committee, it shall state clearly the purpose of such expenditure or disbursement. Expenditures and disbursements in sums under five dollars need not be specifically accounted for by separate items, except in the case of payments made for account of or to political workers, watchers or messengers. The statement to be filed by a candidate or other person not a treasurer shall be in like form as that hereinbefore provided for, but in statements filed by a candidate there shall also be included all contributions made by him.

**Derivation:** Election Law, § 206, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 5, amended by L. 1910, ch. 429, in effect June 8, 1910.

**Forms.** — For statement of election expenses. See Forms (part 12 post).

**Application.** — The provision of this article requiring the treasurer of every political committee to file a statement is satisfied by a statement of every disbursement made directly from the fund of the committee by such treasurer with the name of the person or committee to whom it was made, the date thereof and the purpose of the expenditure or disbursement, and the treasurer is not required to state the manner in which the money was actually applied by those to whom he paid it for a specific purpose. *Matter of McLennan*, 65 Misc. 644, 122 N. Y. Supp. 409.

The Home Rule Tax Association of the State of New York, which is a political committee as defined by § 546, which circulated literature seeking to defeat a constitutional amendment at the polls, and sought to induce electors to vote against the proposition, constituted a "political committee" within the meaning of the Election Law and must file a report of its receipts and expenditures in its political campaign. But they are not required to report general receipts and disbursements made in the prosecution of its ordinary affairs. *Matter of Woodbury* (1915) 174 App. Div. 569, 190 N. Y. Supp. 902.

A Personal Liberty League should be required to file the statement provided by this section. *Report of Atty. Gen.* (1908), 561.

A violation of this section does not constitute a criminal offense. — The corrupt practices act provides for a civil proceeding in which the person proceeded against has an opportunity to confront and cross-examine witnesses, call witnesses in his own behalf, explain the seeming violation, and, if not wilfully committed, an opportunity is afforded to correct the error. It was the intention of the legislature, clearly expressed, that a full opportunity of examination should be given in a civil proceeding. *People ex rel. Childs v. Extraordinary Trial Term* (1915), 194 App. Div. 826, 171 N. Y. Supp. 922.

Indictments against the treasurer of a political committee and others for conspiracy to prevent a compliance with and also for violation of § 546 of the Election Law and § 751 of the Penal Law in failing to file true statements of receipts and disbursements of money for campaign purposes examined and held sufficient. *People ex rel Childs v Knott* (1919), 187 App. Div. 604, 176 N. Y. Supp. 321.

**Remedy not exclusive.** The remedy under the Election Law for securing compliance with § 546 in respect to filing proper statements is not exclusive. *People ex rel Childs v Knott* (1919), 187 App. Div. 604, 176 N. Y. Supp. 321.

The willful failure of the treasurer of a political committee to comply with the requirements of § 546 of the Election Law is a misdemeanor. *People ex rel Childs v Knott* (1919), 187 App. Div. 604, 176 N. Y. Supp. 321.

#### § 547. Campaign contributions to be under true name of contributor.

No person shall in any name except his own directly or indirectly, himself or through another person, make a payment or a promise of payment to a political committee or to any officer or member thereof, or to any person or persons acting under its authority or in its behalf, nor shall any such committee or any such person or persons knowingly receive a payment or promise of payment or enter or cause the same to be entered in the accounts or records of such committee, in any name other than that of the person or persons by whom it is made.

**Derivation:** Election Law, § 207, as added by L. 1906, ch. 502, § 1.

#### § 548. Filing and preserving statements.

All statements required by this article shall be filed with the secretary of state, except in those cases where a candidate is required to file a statement elsewhere by section seven hundred and seventy six of the penal law, and all statements, vouchers, receipts and accounts required by this article shall be preserved for fifteen months after the elections to which they relate and shall be open to public inspection.

**Derivation:** Election Law, § 208, as added by L. 1906, ch. 502, § 1, amended by L. 1910, ch. 439, in effect June 8, 1910.

#### § 549. Secretary of state to provide forms.

The secretary of state shall provide blank forms suitable for the statements above required.

**Derivation:** Election Law, § 209, as added by L. 1906, ch. 502, § 1.

#### § 550. Contempt proceedings upon default in filing statement.

If any person or persons or committee or committees fails to file a statement or account as above required, or if any person or committee files a statement which does not conform to the foregoing requirements in respect to its truth, sufficiency in detail, or otherwise, or if any person or committee has failed to comply with any other of the requirements or provisions of this article, the supreme court or any justice thereof, may compel by order in proceedings for contempt, such person or committee to file a sufficient statement or account, or otherwise comply with the provisions of this article. The applicant for an order, as prescribed in this article,

must present to the supreme court, or a justice thereof, a written petition, setting forth, upon information and belief, stating the grounds and sources thereof, or upon the personal knowledge of such applicant or applicants, any failure or failures to comply with the provisions of this article, the facts showing such failure or failures, and the names of the person or persons, or committee or committees, charged with such failure or failures. Except when made by the attorney-general, such petition shall be verified in like manner as a verified complaint in an action brought in the supreme court.

**Derivation:** Election Law, § 210, as added by L. 1906, ch. 502, § 1.

**Proceeding to compel statement.** — This article is intended to compel publicity in regard to campaign funds and in case of improper expenditure to render easy the prosecution of the offender, and, to that end, should receive a fair and liberal construction. *Matter of McLennan*, (1910) 65 Misc. 644, 122 N. Y. Supp. 409.

The proceeding must be based upon a petition that states facts showing failure to comply with the provisions of the law and the names of the person or committee charged with such failure. *Matter of McLennan*, (1910) 65 Misc. 644, 122 N. Y. Supp. 409.

### § 551. Who may maintain proceedings.

Application for an order as prescribed herein may be made by the attorney-general, district attorney, a candidate voted for at the election in respect to which the allegations in such petition may relate, or by any five qualified voters who voted at such election.

**Derivation:** Election Law, § 211, as added by L. 1906, ch. 502, § 1.

### § 552. Undertaking for costs.

At the time of presenting the petition, the petitioner shall file with such court or justice thereof, an undertaking in a sum to be determined and with sureties to be approved by the court or justice thereof, conditioned to pay such costs and disbursements in such proceeding as shall be adjudged against him, as herein after provided, not exceeding the sum fixed in said undertaking. Upon the presentation of such petition and the giving of the security provided for in the foregoing section, the court or justice thereof shall forthwith issue an order, a copy of which order and petition shall be served personally upon the person or persons named in such petition or left at his or their last known place of residence not less than seventy-two hours prior to the return day thereof, and directing them to appear and show cause at a day certain within ten days after the issue of the order, why such person or persons should not file a statement of election expenses, or

amend the statement already filed, and to furnish the court or justice thereof such further information as the court may require on the subject. Copies of such order shall be served on the attorney-general of the state and on the district attorney of the county wherein such statement is required to be filed.

**Derivation:** Election Law, § 212, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 6.

### § 553. Time within which proceedings must be brought.

Such petition shall be presented within fifty days after any election in respect to which the allegations of such petition shall relate if the statement mentioned therein was filed within the twenty days as herein required; but if the statement shall not have been filed within said twenty days, such petition may be presented at any time not more than sixty days after the filing of the statement. The said petition and order to show cause shall be filed, and any order or judgment made in the proceeding based thereon shall be entered in the office of the clerk of the county in which such election was held, if held wholly within a county, or otherwise in such other office as the court, or a justice thereof, shall direct.

**Derivation:** Election Law, § 213, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 7.

**Time for filing petition.**—The requirement of the statute that the petition should be filed within thirty days after the election was not satisfied by its presentation to a justice of the Supreme Court within that time. Such presentation, although the justice retained the petition, was not a filing of it within the meaning of the statute; and, the petition not having been filed within the prescribed period, the right to institute the inquest expired and the order directing the inquest should be vacated. *Matter of Lance*, (1907) 55 Misc. 13, 106 N. Y. Supp. 211.

### § 554. Proceedings to be summary.

Upon the return of the order to show cause provided for in section five hundred and fifty-two, the court, or justice, shall immediately, and in such manner as the court or justice shall direct, and without respect to any technical requirement, inquire into the facts and circumstances and into such violations of, or failure to comply with, the provisions of this article, as may be alleged in any such petition, or into such other facts and circumstances relative to any such election or to any contribution or expenditure made in connection therewith, which at any time, whether before or during the continuance of such inquest, the court or justice holding such inquest shall deem necessary to secure compliance with the provisions of this article or to punish for a violation thereof. Such other persons as the court, or justice, shall deem necessary or proper to join or bring in as parties to the said proceeding in order to make its order, judgment or writs effective, may be joined as parties in such manner and upon such notice as said court or justice shall direct.

**Derivation:** Election Law, § 214, as added by L. 1906, ch. 502, § 1, and amended by L. 1907, ch. 596, § 8.

**Constitutionality.**—The provision of the Corrupt Practices Act (L. 1906, ch. 502) for an application to the Supreme Court or to a justice thereof



and a summary inquest and judgment requiring a person or committee to file a statement or adjudging a person or committee guilty of contempt of court is in violation of the provision of the Constitution that no person shall be deprived of his liberty or his property without due process of law. *Matter of Lance*, (1907) 55 Misc. 13, 108 N. Y. Supp. 211.

### § 555. Preference over other causes.

The proceedings upon, and the investigation of, the charges set forth in said petition, shall take precedence and be preferred over all other actions or proceedings by or before said court, or justice thereof, and in case of appeals, in the appellate division and in the court of appeals.

*Derivation:* Election Law, § 215, as added by L. 1906, ch. 502, § 1.

### § 556. Appeals.

Appeals may be taken to the appellate division of the supreme court and to the court of appeals, from the orders herein provided for, in the same manner that appeals are taken from orders of the special term of the supreme court, and such appeals shall be considered by such appellate courts as appeals from orders.

*Derivation:* Election Law, § 216, as added by L. 1906, ch. 502, § 1.

### § 557. Subpoenas.

Any court or justice holding such inquest may issue subpoenas for witnesses, who shall be allowed the same fees, whose attendance may be enforced in the same manner, and who shall be subject to the same penalties, as if served with a subpoena in behalf of the state in a criminal prosecution in such court.

*Derivation:* Election Law, § 217, as added by L. 1906, ch. 502, § 1.

### § 558. Personal privilege of witnesses.

No person shall be excused from attending and testifying, or from producing any books, papers or other documents before the court, or justice thereof, upon any trial, investigation or hearing, under the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime, or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may so testify, or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

*Derivation:* Election Law, § 218, as added by L. 1906, ch. 502, § 1.

### § 559. Conduct of hearing.

The attorney-general, a district attorney or some person designated by either, or by such court or justice, shall attend the inquest and examine the witnesses, and the persons or committees by or against whom the proceeding is brought shall have the right to appear by counsel at the inquest, produce evidence, and examine and cross-

examine witnesses in their own behalf. Such court or justice shall have power, by a subpoena duces tecum, to compel the production before him of it, for examination, of any books or papers of any kind or of any other thing which he or it may require in the conduct of such inquiry, and which is relevant and material. Such court or justice shall have power to cause any person who shall neglect or refuse to appear before him or it as a witness, having been duly summoned to be brought before him or it, and any person in attendance as a witness, who shall refuse to be sworn as a witness, or who being sworn shall refuse to answer any proper questions propounded to him, and any person who, having been duly summoned shall neglect or refuse to appear before such court or justice, may be adjudged guilty of contempt and may be fined not more than one thousand dollars, or imprisoned not more than thirty days or both.

**Derivation:** Election Law, § 219, as added by L. 1906, ch. 502, § 1.

### § 540. Judgment and penalty.

The said court or justice thereof shall render judgment in such proceedings as follows: If such person or persons or committee or committees proceeded against, have failed to file the required statement, or have filed a false or incomplete statement without a full intent to defeat the provisions of this article, the judgment shall require the person or persons proceeded against to file such statement or such amendment to the statement as shall render the same true and complete within ten days of the entry of the judgment and to pay the costs and expenses of the proceeding. If such person or persons or committee or committees have failed to file a statement or have filed a false or incomplete statement, or if such person or persons or committee or committees have failed to file such false or incomplete statement with a full intent to defeat the provisions of this article, or if the person or persons proceeded against shall fail to file the required statement or amendment as directed by a judgment of a court or justice within ten days after the entry of such judgment the person or persons or committee or committees proceeded against shall be liable to a fine not exceeding one thousand dollars, or imprisonment for not more than one year, or both. If such person or persons or committee or committees have filed a statement complying with the provisions of this article, or if the person or persons or committee or committees proceeded against or either of them are not required to file a statement as prescribed herein, the court or justice shall render judgment against the applicant or applicants and in favor of such person or committee, for his or their costs and disbursements, to be taxed by such court or justice.

**Derivation:** Election Law, § 220, as added by L. 1906, ch. 502, § 1.

**Construction and application:** *People ex rel Childs v Knott* (1916) 187 App Div 64 176 N. Y. Supl. 31.

Whether this section provides the only remedy for a failure to file the required statement and whether this remedy is legal cannot be raised by a writ of habeas corpus. *People ex rel Childs v Knott* (1920) 224 N. Y. 606 aff'd 187 App Div 64.

### § 561 Application of article limited.

The provisions of this article shall not be applicable to elections of town or village officers in any town or village, or to any person, association or corporation engaged in the publication or distribution of any newspaper or other publication issued at regular intervals in respect to the ordinary conduct of such business.

**Derivation:** Election Law, § 221, as added by L. 1906, ch. 502, § 1.

### § 562 Party funds not to be expended for primary purposes.

No contributions of money, or the equivalent thereof made, directly or indirectly, to any party or to any party committee or member thereof or to any person requesting or acting on behalf of a party or any committee now in the treasury of any party, or party committee shall be expended in aid of the designation or nomination of any person to be voted for at a primary election, either as a candidate for nomination for public office or for any party position.

**Derivation:** Added by L. 1911, ch. 801, § 1 in effect Nov. 10, 1911.

**Amended by** L. 1913, ch. 820, in effect Dec. 17, 1913.

## ARTICLE 17.

### SPECIAL PROVISIONS FOR THE YEAR NINETEEN HUNDRED AND EIGHTEEN.

Act 17 of 1918 added by L. 1918, ch. 297 in effect Apr. 20, 1918. See Part 1A, Special Provisions of Election Law for Year 1918, post, p. 288d.

## ARTICLE 18.

[Art. renumbered by L. 1918, ch. 297, in effect Apr. 20, 1918.]

## LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 600. Laws repealed.

601. When to take effect.

## § 600. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Amended by L. 1918, ch. 297, in effect Apr. 20, 1918.

## § 601. When to take effect.

This chapter shall take effect immediately.

Amended by L. 1918, ch. 297, in effect Apr. 20, 1918.

## SCHEDULE OF LAWS REPEALED.

Revised Statutes..... Part 1, chapter 6, ..... All

Laws of	Chapter	Section	Laws of	Chapter	Section
1778....	12....	9	1824....	316....	All
1778....	16....	All	1825....	33....	All
1778....	39....	All	1826....	245....	All
1781....	86....	2	1827....	179....	1-7, 10, 11
1784....	86....	2	1828....	20....	19 (2d Meet.)
1787....	15....	1-26, 27	1828....	21....	1, 11 45, 192, 427, 480, 506, 529, (2d Meet.)
1789....	12....	All			
1789....	35....	All	1829....	139....	All
1791....	5....	All	1832....	248....	All
1791....	52....	All	1832....	249....	All
1792....	33....	All	1837....	445....	All
1792....	72....	All (15th Sess.)	1841....	301....	All
1792....	1....	All (16th Sess.)	1842....	130....	All
1792....	5....	All (16th Sess.)	1842....	325....	All
1793....	14....	All	1844....	331....	All
1796....	32....	All	1846....	354....	All
1796....	57....	32	1847....	240....	All
1797....	62....	1-10, 12, 13.	1851....	217....	All
1799....	51....	All	1854....	286....	All
1800....	23....	All	1855....	513....	All
1801....	24....	All	1856....	79....	All
1801....	61....	1-9, 11-13, 15, 19, 20	1859....	380....	All
1801....	64....	1-3	1860....	349....	All
1802....	81....	1, 3, 4	1860....	480....	All
1804....	2....	All (20th Sess.)	1861....	307....	All
1807....	112....	All	1864....	253....	All
1808....	170....	2, 3	1865....	475....	All
1809....	16....	All	1865....	570....	All
1810....	193....	12	1865....	740....	All
1811....	201....	All	1866....	524....	All
1812....	56....	All	1866....	812....	All
1812....	169....	All	1870....	134....	All
R.L. 1813	25....	All	1870....	138....	All
R.L. 1813	41....	All	1870....	388....	All
1815....	145....	All	1870....	503....	All
1819....	37....	All	1871....	712....	All
1821....	246....	All	1872....	570....	All
1822....	34....	1	1872....	698....	All
1822....	250....	1-15, 17-26, 30	1872....	757....	All
1823....	268....	All	1873....	314....	All
1824....	256....	All	1873....	474....	All

Laws of	Chapter	Section	Laws of	Chapter	Section
1873....	824....	All	Laws 1891] 1 part amending L. 1888, Ch. 583, Tit. 20, §§ 3-25; 26 all after the word "board" in the last line; 27-32		
1875....	138....	All			
1876....	287....	All			
1877....	29....	All			
1877....	322....	All			
1878....	354....	All			
1879....	320....	All			
1880....	56....	All	1891....	296....	All
1880....	142....	All	1891....	336....	All
1880....	366....	All	1892....	127....	All
1880....	437....	All	1892....	680....	All
1880....	460....	All	1893....	233....	All
1880....	465....	All	1893....	274....	All
1880....	508....	All	1893....	370....	All
1880....	553....	All	1894....	61....	All
1880....	576....	All	1894....	275....	All
1881....	18....	All	1894....	302....	All
1881....	137....	All	1894....	348....	2-8
1881....	163....	All	1894....	704....	All
1881....	196....	All	1894....	765....	All
1882....	13....	All	1895....	28....	All
1882....	154....	All	1895....	73....	All
1882....	366....	All	1895....	138....	All
1882....	410....	1839-1844, 1846- 1848, 1850-1861, 1864-1866, 1868- 1929, 1931	1895....	158....	All
1883....	316....	All	1895....	810....	All
1883....	380....	All	1895....	909....	All
1883....	422....	All	1895....	991....	All
1883....	508....	All	1895....	992....	All
1884....	161....	All	1895....	993....	All
1885....	267....	3, 4	1895....	1034....	All
1885....	446....	All	1895....	1035....	All
1886....	649....	All	1896....	163....	All
1887....	265....	All	1896....	339....	All
1888....	583....	[For sections re- pealed in title xx. as amended, see chapter 236, Laws 1891, in this sched- ule] Title 20, §§ 3- 25; 26 all after the word "board," in the last line; 27-32	1896....	909....	All
1889....	1....	All	1897....	379....	All
1890....	117....	All	1897....	410....	All
1890....	169....	All	1897....	449....	All
1890....	262....	All	1897....	450....	All
1890....	321....	All	1897....	608....	All
1890....	330....	All	1897....	609....	All
1890....	355....	All	1898....	168....	All
1891....	7....	All	1898....	179....	All
1891....	236....	[Sections 3 to 25, inclusive, all after the word "board" in the last line of section 26, and sec- tions 27 to 32, in- clusive, of title xx. of chapter 583, Laws 1888, as amended by chapter 236,	1898....	335....	All
			1898....	340....	All
			1898....	363....	All
			1898....	674....	All
			1898....	675....	All
			1898....	676....	All
			1898....	58....	All
			1899....	266....	All
			1899....	363....	All
			1899....	466....	All
			1899....	467....	All
			1899....	473....	All
			1899....	499....	All
			1899....	630....	All
			1899....	641....	All
			1899....	649....	All
			1900....	202....	All
			1900....	204....	All
			1900....	225....	All
			1900....	381....	All
			1900....	506....	All

Laws of	Chapter	Section	Laws of	Chapter	Section
1900	644	All	1905	163	All
1900	684	All	1905	207	All
1900	711	All	1905	229	All
1900	732	All	1905	643	All
1901	93	All	1905	674	All
1901	113	All	1905	676	All
1901	167	All	1905	689	All
1901	208	All	1906	159	All
1901	232	All	1906	227	All
1901	300	All	1906	259	All
1901	360	All	1906	331	All
1901	630	All	1906	466	All
1901	536	1, 2	1906	498	All
1901	544	All	1906	502	All
1901	596	3, 4	1906	570	All
1901	615	All	1906	642	All
1901	654	All	1907	100	All
1902	89	All	1907	265	All
1902	176	All	1907	296	All
1902	196	All	1907	470	All
1902	241	All	1907	472	All
1902	405	All	1907	504	All
1903	111	All	1907	596	All
1903	122	All	1907	654	All
1903	197	All	1907	744	All
1903	596	All	1908	106	All
1903	641	All	1908	456	All
1904	70	All	1908	463	All
1904	74	All	1908	464	All
1904	249	All	1908	480	All
1904	350	All	1908	488	All
1904	394	All	1908	489	All
1904	487	All	1908	491	All
1904	488	All	1908	492	All
1904	733	All	1908	531	All
1905	49	All			

#### CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS

When a statute has been specifically repealed, that and the repealing statute are given without an explanatory note.

**L. 1778, ch. 12, § 10.** — Provides for the delivery of commissions under the great seal of state to delegates to the continental congress. *Obsolete*

**L. 1778, ch. 39.** — Provides for a special election in the eastern district of the state to elect certain public officers. *Temporary and obsolete*

**L. 1787, ch. 15.** — L. 1801, ch. 193, repeals all acts "within the purview or operation" of the revised acts of 1801, one of which, L. 1801, ch. 61, regulates the election of governor, lieutenant governor, senators and members of assembly and contains the substance of the statute repealed

**L. 1789, ch. 35.** — Directs the supervisors of the county of Westchester to meet on the fourth Monday of May in each year to canvass votes for members of assembly. Superseded by L. 1801, ch. 61 and included in the repeal by L. 1801, ch. 193, which repeals all acts which come within the purview of the revised acts of 1801

**L. 1791, ch. 5.** — Amends L. 1787, ch. 15. Superseded by L. 1801, ch. 61, and included in the repeal by L. 1801, ch. 193 which repeals all acts which come within the purview of the revised acts of 1801

**L. 1792, ch. 33.** — Repeals L. 1789, ch. 12, and L. 1791, ch. 52, regulating the election of representatives to congress. *Obsolete*

**L. 1792, ch. 72.** — Provides for the appointment of presidential electors for the election in 1792 and for the convening of the legislature in case of an election prior to the ordinary time. *Temporary and obsolete*

**L. 1792, ch. 1 (18th Hess.).** — Repeals L. 1792, ch. 72, § 2, which apportioned the presidential electors for the year 1792, among four districts of the state.

**L. 1792, ch. 8.** — Regulates the election of representatives in congress. Expires by limitation with the taking of a future census of the inhabitants of this state. Temporary and obsolete.

**L. 1793, ch. 14.** — Provides for the election of senators in congress and expires by limitation forty days after the first meeting of the legislature after January 1, 1800. Temporary and obsolete.

**L. 1796, ch. 32.** **L. 1813, ch. 202,** repeals all acts "within the purview or operation" of the revised laws of 1813, one of which, 2 R. L., ch. 25, p. 246, relates to the election of president and vice president and contains the substance of the statute repealed.

**L. 1798, ch. 57, § 32.** — Continues L. 1792, ch. 3, which regulates the election of representatives in congress, until March 1, 1797. Temporary and obsolete.

**L. 1797, ch. 62; L. 1799, ch. 51.** — **L. 1801, ch. 193,** repeals all acts "within the purview or operation" of the revised acts of 1801, one of which, L. 1801, ch. 61, regulates the election of governor, lieutenant governor, senators and members of assembly, and another of which, L. 1801, ch. 64, regulates the election of representatives in congress. The two contain the substance of the statutes repealed.

**L. 1800, ch. 23.** — Revives L. 1793, ch. 14, which regulates the election of senators in congress. **L. 1801, ch. 24** was afterward enacted to regulate the same subject. Abrogated and obsolete.

**L. 1801, ch. 64.** — **L. 1813, ch. 202,** repeals all acts "within the purview or operation" of the revised laws of 1813, one of which, 2 R. L., ch. 46, p. 243, regulates the elections of representatives in congress and contains the substance of the statute repealed.

**L. 1802, ch. 81.** — **L. 1813, ch. 202,** repeals all acts "within the purview or operation" of the revised laws of 1813, one of which, 2 R. L., ch. 84, p. 241, apportioned the senate and assembly districts and contains the substance of the statute repealed.

**L. 1804, ch. 2.** — **L. 1827, ch. 9, § 4, § 1,** repeals all laws "consolidated and re-enacted in" R. S., pt. 1, ch. 6; R. S., pt. 1, ch. 6, tit. 8, art. 3, § 11, contains the substance of the statute repealed.

**L. 1809, ch. 16.** — **L. 1813, ch. 202,** repeals all acts "within the purview or operation" of the revised laws of 1813 one of which, 2 R. L., ch. 25, p. 246, provides for the compensation of presidential electors and contains the substance of the statute repealed.

**L. 1810, ch. 193, § 12.** — **L. 1813, ch. 202,** repeals all acts "within the purview or operation" of the revised laws of 1813, one of which, 2 R. L., ch. 41, p. 247, provides for the return by inspectors of elections of votes for governor, lieutenant governor, senators and representatives in congress and contains the substance of the statute repealed.

**L. 1812, ch. 56.** — **L. 1813, ch. 202,** repeals all acts "within the purview or operation" of the revised laws of 1813, one of which, 2 R. L., ch. 25, p. 246, regulates the meetings of presidential electors and contains the substance of the statute repealed.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

**L. 1812, ch. 169.** — **L. 1813, ch. 202,** repeals all acts "within the purview or operation" of the revised laws of 1813, one of which, 2 R. L., ch. 46, p. 243, regulates the election of representatives in congress and contains the substance of the statute repealed.

**2 R. L., 1813, ch. 25, p. 246.** Regulates the proceedings of presidential electors. So much as is inconsistent with L. 1825, ch. 33, is repealed by § 5 of that act. Abrogated and obsolete.

**2 R. L., 1813, ch. 41, p. 247.** — Regulates elections of governor, lieutenant governor, senators, and members of assembly. Superseded by L. 1822, ch. 250.

**2 R. L., 1813, ch. 46, p. 243.** — Regulates the election of representatives in congress. Superseded by L. 1822, ch. 250.

**L. 1819, ch. 37.** — Enacts that the election of representatives in congress



shall be held on the last Tuesday of April, 1821, and in every second year thereafter. Superseded by L. 1822, ch. 250.

**L. 1821, ch. 246.** — Section 1 requires county clerks to make returns to the secretary of state before May 21, 1821, and requires the secretary of state and other state officers to complete their proceedings thereon in three days. Section 2 requires the secretary of state to send by express if necessary, the certificates calling for a constitutional convention pursuant to L. 1821, ch. 80 § 4. Temporary and obsolete. Section 3 provides that any mayor, recorder, judge of any court of common pleas, clerk of any county or any commissioner authorized to administer oaths may qualify canvassers of votes returned to the secretary's office. L. 1822, ch. 250, § 14, provides that canvassers shall qualify before the chancellor or one of the justices of the supreme court or a master in chancery or the recorder of the city of Albany, and section 29 of the same law repeals all inconsistent statutes.

**L. 1822, ch. 34, § 1.** — Provides that state canvassers may determine within less than twenty eight days the result of a special election in case of any vacancy in the office of representative in congress. Superseded by L. 1822, ch. 250 § 14.

**L. 1824, ch. 316.** — Provides for a special vote on the manner of choosing presidential electors. Temporary and obsolete.

**L. 1828, ch. 20, § 19 (2d meeting).** — In accordance with the provisions of section 33 of this same act, section 19 (not a part of the original revised statutes) was printed by the revisers as § 20 of R. 8, pt. 1, ch. 8 tit. 6. R. 8, pt. 1, ch. 6, was repealed by L. 1842, ch. 130, tit. 9, § 8.

**L. 1832, ch. 248.** — Alters the time of electing representatives in congress. Superseded by L. 1842, ch. 130.

**L. 1832, ch. 249.** — Provides for the publication and distribution of L. 1829, ch. 139, directing the manner of choosing presidential electors, and further provides for the compensation of messengers employed under R. 8, pt. 1, ch. 6, tit. 5, art. 1, § 6 (probably error for § 26). Temporary and obsolete.

**L. 1837, ch. 446.** — Regulates the transmission to the secretary of state of certified copies of statements of canvass by boards of county canvassers in certain counties. Amends L. 1829, ch. 139 §§ 5, 11. Obsolete.

**L. 1842, ch. 325, §§ 3-5.** — Requires the county board of canvassers in certain counties to specify the number of votes for representatives in congress in each congressional district, and provides for special meetings in October 1842, of supervisors and other bodies charged with the duty of dividing towns into election districts and designating polling places. Obsolete.

**L. 1846, ch. 354.** — Prescribes the method of receiving and canvassing votes upon certain proposed constitutional amendments at the general election to be held in 1846. Temporary and obsolete.

**L. 1855, ch. 513, § 3.** — Statute repealed provides that in the city of New York there shall be nine ballot boxes. L. 1854, ch. 79, § 2 provides that in the city of New York there shall be ten ballot boxes. Section 1 provides that no much of L. 1855, ch. 513, § 3, as is inconsistent therewith is repealed.

**L. 1860, ch. 349.** — Prescribes the method of receiving and canvassing votes upon a proposed constitutional amendment at the general election to be held in 1860. Temporary and obsolete.

**L. 1870, ch. 503.** — Repeals all laws which prescribe that voters shall register before election day, "except so far as the same apply to the city and county of New York."

**L. 1872, ch. 757.** — Prescribes the method of receiving and canvassing votes upon certain proposed constitutional amendments at the general election to be held in 1872. Temporary and obsolete.

**L. 1873, ch. 314.** — Prescribes the method of receiving and canvassing votes at the general election in 1873 upon the question whether certain judicial officers shall be elected or appointed. Temporary and obsolete.

**L. 1879, ch. 320.** — Prescribes the method of receiving and canvassing votes at the general election to be held in 1879 upon a proposed constitutional amendment. Temporary and obsolete.

**L. 1885, ch. 267, §§ 3, 4.** — Amends the title of L. 1880, ch. 47 (now repealed), and amends the first sentence of section 1 thereof. Obsolete.

**L. 1888, ch. 583; L. 1891, ch. 236.**—Change made in language used in section column in order to conform to the general plan adopted for the proposed laws. Substance not changed.

**L. 1890, ch. 330.**—Provides special appropriations for the expenses of election in 1890. Temporary and obsolete.

**L. 1892, ch. 127.**—Authorizes the use of the Myers' automatic ballot cabinets at elections of town officers. Superseded by Election Law (L. 1896, ch. 909), article 7 as added by L. 1899, ch. 486. Obsolete.

**L. 1894, ch. 348.**—Consists of eight sections. Section 1, amending "old" Town Law, is repealed by Town Law. Sections 2, 3, 5 amend sections 11, 12, 15 of "old" Election Law (L. 1892, ch. 680). Section 4 relates to election officers in New York city. Section 6 relates to term of election officers. All these sections were superseded by Election Law of 1896, ch. 909. Section 7 repeals inconsistent acts and section 8 states when act shall take effect.

**L. 1895, ch. 1035.**—Amends Election Law (L. 1892, ch. 680), section 11 relating to election officers to "read as follows." Superseded by Election Law (L. 1896, ch. 909). Obsolete.

**L. 1896, ch. 909.**—This statute which is the "old" Election Law is recommended for repeal because its live provisions have been incorporated in Election Law.

**L. 1897, ch. 379.**—All of statute except sections 22, 23, 27, 28 have been heretofore amended "to read as follows." Section 27 renumbered certain sections of the old Election Law and section 28 states when act takes effect; recommended for repeal. Sections 22 and 23 consolidated in Election Law, §§ 431 and 437.

**L. 1897, ch. 606.**—Consolidated in Election Law, § 330.

**L. 1898, ch. 335.**—All of this statute except sections 6, 7, part, and 8 has been heretofore amended "to read as follows." Section 8 states when act takes effect; recommended for repeal. Sections 6 and 7 part consolidated in Election Law, §§ 358, 366-372.

**L. 1898, ch. 674.**—Sections 14, 15 have been superseded by amendment "to read as follows." Balance of act consolidated in Election Law, §§ 500-512, 515 part, 516-522.

**L. 1899, ch. 58.**—Consolidated in Election Law, §§ 514, 515 part.

**L. 1899, ch. 466.**—Part of section 1 amended "to read as follows." Balance of section 1 consolidated in Election Law, §§ 390, 394-396, 399-402, 409-412, 417, 418, 420 and 421. Section 2 rennumbers article and certain sections of Election Law. Section 3 is the enacting clause; recommended for repeal.

**L. 1899, ch. 473.**—Part of statute heretofore amended "to read as follows." Balance of act consolidated in Election Law.

**L. 1899, ch. 630.**—Sections 1-5, 8, 10 amended so as to read as follows. Section 7 repeals "old Election Law, § 33, subd. 2, and rennumbers subds. 3 and 4. Sections 6, 9, 11 consolidated in Election Law. Section 12 states when act takes effect.

**L. 1899, ch. 641.**—Consolidated in Election Law.

**L. 1900, ch. 202.**—Section 1 amended "to read as follows." Section 2 consolidated in Election Law. Section 3 states when act takes effect.

**L. 1900, ch. 225.**—Section 1 amended "to read as follows." Section 2 consolidated in Election Law. Section 3 states when act takes effect.

**L. 1900, ch. 381.**—Consists of six sections. Sections 1-3, 4, part, amending Election Law, § 82; section 5 amended so as to read as follows. Section 4 amending Election Law, § 85, consolidated in Election Law. Section 6 states when act takes effect.

**L. 1901, ch. 25.**—Consists of twenty-two sections. Sections 1-5 part, 6, 8, 9-18, 20 amended so as to read as follows. Section 22 states when act takes effect.

**L. 1901, ch. 360.**—Consolidated in Election Law.

**L. 1901, ch. 530.**—Consists of eight sections. Section 7 amended so as to read as follows. Section 8 states when act shall take effect.

**L. 1901, ch. 536, §§ 1, 2.**—Consists of six sections. Section 3 is repealed by Town Law. Section 4 is a repeal. Section 5 is a saving clause

of a temporary nature and now obsolete. Section 8 states when act shall take effect. Remainder of statute, sections 1, 2 consolidated in Election Law.

L. 1901, ch. 544. — Consolidated in Election Law.

L. 1901, ch. 598. — Consists of four sections. Sections 1, 2, relate to Town Law and are repealed by Town Law. Section 3 is consolidated in Election Law, section 4 states when act shall take effect.

L. 1901, ch. 654. — Incorporated in Election Law.

L. 1902, ch. 195. — Consists of sixteen sections. Section 1 amended "to read as follows." Section 15 is temporary. Section 16 states when act shall take effect. Remainder of act incorporated in Election Law.

L. 1902, ch. 405. — Consists of six sections. Sections 1, 3-5 amended so as to read as follows. Section 6 states when act takes effect. Section 2 incorporated in Election Law.

L. 1903, ch. 111. — Consists of seven sections. Sections 1-5 amended so as to read as follows. Section 7 states when act takes effect. Section 6 incorporated in Election Law.

L. 1903, ch. 122. — Incorporated in Election Law.

L. 1903, ch. 595. — Incorporated in Election Law.

L. 1904, ch. 70. — Incorporated in Election Law.

L. 1904, ch. 350. — Incorporated in Election Law.

■ 1904, ch. 394. — Consists of fourteen sections. Sections 7-10, 12 amended so as to read as follows. Section 14 states when act shall take effect. Remainder of act consolidated in Election Law.

L. 1904, ch. 487. — Consolidated in Election Law.

L. 1904, ch. 488. — Consolidated in Election Law.

L. 1904, ch. 733. — Consists of three sections. Section 2 amended so as to read as follows. Section 3 states when act shall take effect. Section 1 consolidated in Election Law.

L. 1905, ch. 207. — Consolidated in Election Law.

L. 1905, ch. 229. — Consolidated in Election Law.

L. 1905, ch. 643. — Consists of twenty-five sections. Sections 3-5 amended so as to read as follows. Section 25 states when act shall take effect. Remainder of act consolidated in Election Law.

L. 1905, ch. 674. — Consists of five sections. Section 3 part amended "so as to read as follows." Section 4 is a temporary provision. Section 5 states when act shall take effect. Remainder of act consolidated in Election Law.

L. 1905, ch. 675. — Consists of six sections. Section 1 amended so as to read as follows. Section 6 states when act shall take effect. Remainder of act consolidated in Election Law.

L. 1905, ch. 689. — Consolidated in Election Law.

L. 1906, ch. 159. — Consolidated in Election Law.

L. 1906, ch. 227. — Consolidated in Election Law.

L. 1906, ch. 259. — Consolidated in Election Law.

L. 1906, ch. 331. — Temporary, recommended for repeal.

L. 1906, ch. 466. — Temporary, recommended for repeal.

■ 1906, ch. 498. — Consolidated in Election Law.

L. 1906, ch. 502. — Part of statute amended so as to read as follows. Balance consolidated in Election Law.

L. 1906, ch. 642. — Consolidated in Election Law.

L. 1907, ch. 119. — Consolidated in Election Law.

L. 1907, ch. 255. — Consolidated in Election Law.

L. 1907, ch. 296. — Consolidated in Election Law.

L. 1907, ch. 470. — Consolidated in Election Law.

L. 1907, ch. 472. — Consolidated in Election Law.

L. 1907, ch. 504. — Consolidated in Election Law.

L. 1907, ch. 508. — Consolidated in Election Law.

L. 1907, ch. 654. — Consolidated in Election Law.

L. 1907, ch. 744. — Consolidated in Election Law.

**PART 1A**

**SPECIAL PROVISIONS OF ELECTION LAW FOR  
YEAR 1918.**



## Special Provisions of Election Law for Year 1918.

- § 7-a. Special provision as to number of enrollment blanks in the year nineteen hundred and eighteen.

Added by L. 1918, ch. 323, in effect Apr. 24, 1918.

Repealed by L. 1919, ch. 504, in effect Oct. 1, 1919.

- § 17-a. Unofficial primaries in cities in the year nineteen hundred and eighteen.

Added by L. 1918, ch. 8, in effect Feb. 19, 1918.

Repealed by L. 1919, ch. 504, in effect Oct. 1, 1919.

- § 151-a. Meetings for registration for special elections in the year nineteen hundred and eighteen.

In the year nineteen hundred and eighteen, instead of one meeting of inspectors of election for revising and correcting the register of electors for a special election, as provided in section one hundred and fifty-one, there shall be two meetings for revising and correcting the register for the first special election that may be held in any election district in such year, including a special election called or to be called pursuant to section two hundred and ninety-two or to be held under the city local option law or other statute. Such meetings shall be held, respectively, on the second Friday and second Saturday before the election. In a city of over one million inhabitants, the first of such meetings shall be held open from five o'clock in the afternoon until ten o'clock in the evening, and the second of such meetings from seven o'clock in the forenoon until ten o'clock in the evening, and each inspector of election shall receive four dollars for his services at the first of such meetings and seven dollars and fifty cents for his services at the second of such meetings. Outside of such city, each such meeting shall be held open from eight o'clock in the forenoon until ten o'clock in the evening, and the inspectors shall receive for their services at each meeting the compensation fixed by or pursuant to law for services on any day of registration in the same town or city. The provisions of section one hundred and sixty shall apply to both of such meetings; and the names to be added to the register, in the manner provided in that section, shall include women who are or will be qualified electors at such election.

Added by L. 1918, ch. 7, in effect Feb. 19, 1918.

- § 291-a. Time of opening and closing polls at city elections held at a time other than general elections, during the year nineteen hundred and eighteen.

The polls of every city election held at a time other than the time of general elections during the year nineteen hundred and eighteen, shall be opened at six o'clock in the forenoon and shall close at eight o'clock in the afternoon. There shall be no adjournment or intermission until the polls are closed at such elections. Electors entitled to vote at such elections who



are in the polling place at or before eight o'clock in the afternoon shall be allowed to vote.

Added by L. 1918, ch. 50, in effect Mar. 13, 1918.

**§ 196-b. Readjustment of election districts in the year nineteen hundred and eighteen.**

In the year nineteen hundred and eighteen, after May first and not later than August first, in every town, ward of a city or assembly district, the board, body or officer authorized by this chapter to divide the same into election districts and to create, divide and consolidate election districts, shall divide each town, ward or assembly district, as the case may be, into election districts, wherever necessary, in order that the several election districts shall contain as near as may be the required number of voters as prescribed by sections two hundred and ninety six, two hundred and ninety seven or, four hundred and nineteen, according to the provisions thereof in force when such law is made, notwithstanding that the vote at the general election in the year nineteen hundred and seventeen in any town, ward or existing election district may not have exceeded a number stated in such sections. Said division shall take effect on the sixth Wednesday before the general election in such year. In a city or town which uses voting machines if sufficient machines cannot be provided for all of the election districts, the voting at any election in the year nineteen hundred and eighteen may be by machines in districts where they are provided and by paper ballot in districts for which machines are not provided, and the number of voters in a district adjusted accordingly.

In determining the probable number of voters in a proposed election district, such board or body shall examine the registers of existing districts and the poll-books of the last general election, with reference to ascertaining the number of male voters residing in the territory of such proposed district and shall also consult the state enumeration of the year nineteen hundred and fifteen, the military census, so far as available, provided for in chapter four hundred and nine of the laws of nineteen hundred and seventeen, any other census or enumeration made or to be made pursuant to law and other available data, for ascertaining the actual or probable number of voters of both sexes in a proposed election district.

Added by L. 1918, ch. 323, in effect Apr. 24, 1918.

**ARTICLE 17.**

[Article added by L. 1918, ch. 297; repealed by L. 1920, ch. 877, in effect May 21, 1920.]

**Special Provisions for the Year Nineteen Hundred and Eighteen.**

**PART 2. .**

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**CONSTITUTIONAL PROVISIONS  
CONCERNING  
ELECTIONS AND ELECTIVE OFFICERS.**



# CONSTITUTION

## OF THE

# United States of America.

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### PROVISIONS THEREIN, CONCERNING ELECTIONS AND ELECTIVE OFFICERS.

#### ARTICLE I.

**Section 1.** The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

**Section 2.** The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.\*

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.\*

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\* See amendment, post, providing for direct election of U. S. senators.

No person shall be a senator who shall not have attained to the age of thirty years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

**Section 4.** The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof, but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

**Section 5.** Each house shall be the judge of the elections, returns and qualifications of its own members. Each house may with the concurrence of two thirds expel a member.

**Section 6.** No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

**Section 8.** The congress shall have power to establish an uniform rule of naturalization, and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

## ARTICLE II.\*

**Section 1.** The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress, but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such

\* See 12th Amendment, post.

shall act accordingly, until the disability be removed, or a president shall be elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation — "I do solemnly swear (or affirm) that I will faithfully execute the office of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

**Section 2.** The president . . . shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

**Section 4.** The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## ARTICLE VI.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states shall be bound by oath or affirmation, to support this constitution, but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## 12th AMENDMENT.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves. they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. — The president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed, and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for, as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president, a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

## 14th AMENDMENT.

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall



any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

**Section 3.** No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house remove such disability.

**Section 5.** The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

#### 15th AMENDMENT.

**Section 1.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

**Section 2.** The congress shall have power to enforce this article by appropriate legislation.

#### 17th AMENDMENT.

The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

#### 19th AMEND

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

# CONSTITUTION

## OF THE

# State of New York.

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### PROVISIONS THEREIN CONCERNING ELECTIONS AND ELECTIVE OFFICERS.

#### ARTICLE I.

##### § 1. Persons not to be disfranchised.

No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Const. 1846, art. I, § 1.

#### ARTICLE II.

##### § 1. Qualification of voters.

Every citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county and for the last thirty days a resident of the election district in which he or she may offer his or her vote, shall be entitled to vote at such election in the election district of which he or she shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided, however, that a citizen by marriage shall have been an inhabitant of the United States for five years; and provided that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his or her vote by reason of his or her absence from such election district; and the legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

Const. 1846, art. II, § 1.

Amended, 1917.

##### § 1-a. Legislature may provide vote for absent voters.

The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who may, on the occurrence of any general election, be unavoidably absent from the state or county of their residence because their duties, occupation or business require them to be elsewhere within the United States, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

Added, 1919.

##### § 2. Persons excluded from the right of suffrage.

No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not

paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

Const. 1846, art. II, § 2.

**§ 3. Certain occupations and conditions not to affect residence.**

For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas, nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

Const. 1846, art. II, § 3.

**§ 4. Registration and election laws to be passed.**

Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections, except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants, voters shall be registered upon personal application only, but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

Const. 1846, art. II, § 4.

**§ 5. Manner of voting.**

All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

Const. 1846, art. II, § 5.

**§ 6. Registration and election boards to be bi-partisan, except at town and village elections.**

All laws creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots at the polls to voters or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

New.

**ARTICLE III.**

**§ 2. Number and terms of senators and assemblymen.**

The Senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen to

two years. The Assembly shall consist of one hundred and fifty members who shall be chosen for one year.

Const. 1846, art. III, § 2.

### § 2. Senate districts.

The State shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river and thence around the southern end of Manhattan island, to the place of beginning, and also Governor's, Bedloe's and Ellis islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty third street, Lexington avenue, East Fifty third street, Third avenue, East Fifty second street, and the East river to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the transverse road across Central park to Ninety seventh street, Fifth avenue, East Ninety sixth street, Lexington avenue, East Twenty third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty sixth street, Tenth avenue, West Forty third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty third street, and running thence along West Forty third street, Tenth avenue, West Forty sixth street, the Hudson river, West Eighty ninth street, Tenth or Amsterdam avenue, West Eighty sixth street, Ninth or Columbus avenue, West Eighty first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty second street and the East river, and running thence along East Fifty second street, Third avenue, East Fifty third street, Lexington avenue, East Eighty fourth street, Second avenue, East Eighty third street and the East river, to the place of beginning, and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty ninth street and the Hudson river and running thence along the Hudson river and Spuyten Duyck creek around the northern end of Manhattan island, thence southerly along the Harlem river to the north end of Fifth avenue, thence along Fifth avenue, East One Hundred and Twenty ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, to transverse road across Central park at Ninety seventh street, Eighth avenue, West Eighty first street, Ninth or Columbus avenue, West Eighty sixth street, Tenth or Amsterdam avenue and West Eighty ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty third street and the East river, running thence through East Eighty third street, Second avenue, East Eighty fourth street, Lexington avenue, East Ninety sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers, to the place of beginning; and also Randall's island and Ward's island.

All the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the mean low water mark.

District number twenty one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty ninth street, Fifth

avenue and the Harlem river to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city



of Buffalo, as at present constituted, and all the remainder of the said county of Erie not heretofore described.

District number fifty (50) shall consist of the counties of Chautauque and Cattaraugus.

Const. 1846, art. III, § 3.

#### § 4. Enumerations and reapportionments.

An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts, nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one third of all the senators, and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the Senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

Const. 1846, art. III, § 4.

#### § 5. Apportionment of assemblymen; creation of assembly districts.

The members of the assembly shall be chosen by single districts, and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the State, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of members of assembly, shall be the ratio for appointment, which shall be made as follows. One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county containing less than the ratio and one half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders on the order thereof respectively. No county shall have more

members of assembly than a county having a greater number of inhabitants, excluding aliens.

Until after the next enumeration, members of the Assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member, and Yates county, one member.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council or if there be none the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration, and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided, but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town and no block in a city inclosed by streets or public ways shall be divided in the formation of assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens, but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the State enumeration of one thousand eight

hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

Const. 1846, art. III, § 5.

#### **§ 6. Compensation of members.**

Each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

Const. 1846, art. III, § 6.

#### **§ 7. Civil appointments of members void.**

No member of the Legislature shall receive any civil appointment within this State, or the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

Const. 1846, art. III, § 7.

#### **§ 8. Persons disqualified from being members.**

No person shall be eligible to the Legislature, who at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

Const. 1846, art. III, § 8.

#### **§ 9. Time of elections.**

The elections of senators and members of assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

Const. 1846, art. III, § 9.

#### **§ 10. Powers of each house.**

A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president to preside in case of the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor.

Const. 1846, art. III, § 10.

**§ 18. Cases in which private and local bills shall not be passed.**

The legislature shall not pass a private or local bill in any of the following cases:

Providing for election of members of boards of supervisors.

The opening and conducting of elections or designating places of voting.

The Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment, may be provided for by general laws. \* \* \*

**§ 26. Board of supervisors.**

There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen or other legislative body of the city. [As amended in 1899.]

Const. 1846, art. III, § 22, added in 1874.

**ARTICLE IV.****§ 1. Executive power.**

The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time, and for the same term. The Governor and Lieutenant-Governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

Const. 1846, art. IV, § 1.

**§ 2. Qualifications of governor and lieutenant-governor.**

No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this State.

Const. 1846, art. IV, § 2.

**§ 3. Election of governor and lieutenant-governor.**

The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

Const. 1846, art. IV, § 3.

**§ 6. When lieutenant-governor to act as governor.**

In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the

disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

Const. 1846, art. IV, § 6.

**§ 7. Qualifications and duties of Lieutenant-governor; succession to the governorship.**

The Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate but shall have only a casting vote therein. If during a vacancy of the office of Governor the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

Const. 1846, art. IV, § 7.

**ARTICLE V.**

**§ 1. State officers.**

The Secretary of State, Comptroller, Treasurer, Attorney General and State Engineer and Surveyor shall be chosen at a general election, at the times and places of electing the Governor and Lieutenant Governor, and shall hold their offices for two years except as provided in section two of this article. Each of the officers in this article named, excepting the Speaker of the Assembly shall, at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer.

Const. 1846, art. V, §§ 1, 2.

**§ 2. First election of state officers.**

The first election of the Secretary of State, Comptroller, Treasurer, Attorney General and State Engineer and Surveyor, pursuant to this article, shall be held in the year one thousand eight hundred and ninety five and their terms of office shall begin on the first day of January following and shall be for three years. At the general election in the year one thousand eight hundred and ninety eight, and every two years thereafter, their successors shall be chosen for the term of two years.

New.

**§ 5. Commissioners of the land office; of the canal fund; canal board.**

The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney General and State Engineer and Surveyor shall be the commissioners of the land office. The Lieutenant Governor, Secretary of State, Comptroller, Treasurer and Attorney General shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the State Engineer and Surveyor and the Superintendent of Public Works.

Const. 1846, art. V, § 5.

**§ 7. State treasurer, suspension by governor.**

The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of

the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer.

Const. 1846, art. V, § 7.

### § 2. Certain offices abolished.

All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished, and no such office shall hereafter be created by law, but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

Const. 1846, art. V, § 8.

## ARTICLE VI.

### § 1. Supreme court; how constituted; judicial districts.

The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the Justices now in office, and of the Judges transferred thereto by the fifth section of this article, all of whom shall continue to be Justices of the Supreme Court during their respective terms, and of twelve additional Justices who shall reside in and be chosen by the electors of, the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors. The successors of said Justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the State, and thereupon reapportion the Justices to be thereafter elected in the districts so altered. The Legislature may from time to time increase the number of justices in any judicial district except that the number of justices in the first and second district or in any of the districts into which the second district may be divided, shall not be increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last State, or Federal census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last State or Federal census or enumeration. The Legislature may erect out of the second judicial district as now constituted, another judicial district and apportion the justices in office between the districts, and provide for the election of additional justices in the new district not exceeding the limit herein provided.

Const. 1846, art. VI, § 6, amended in 1906.

### § 2. Judicial departments; appellate division, how constituted; governor to designate justices; reporter; time and place of holding courts.

The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.

There shall be an Appellate Division of the Supreme Court, consisting of seven Justices in the first department, and of five Justices in each of the other departments. In each department four shall constitute a quorum, and



the concurrence of three shall be necessary to a decision. No more than five Justices shall sit in any case.

From all the Justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department, and he shall designate the Presiding Justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other Justices shall be designated for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. A majority of the Justices so designated to sit in the Appellate Division, in each department shall be residents of the department. He may also make temporary designations in case of the absence or inability to act of any Justice in the Appellate Division, or in case the Presiding Justice of any Appellate Division shall certify to him that one or more additional Justices are needed for the speedy disposition of the business before it. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the Presiding Justices of the several departments at a meeting called by the Presiding Justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination. No Justice of the Appellate Division shall, within the department to which he may be designated to perform the duties of an Appellate Justice, exercise any of the powers of a Justice of the Supreme Court other than those of a Justice out of court, and those pertaining to the Appellate Division, or to the hearing and decision of motions submitted by consent of counsel, but any such Justice, when not actually engaged in performing the duties of such Appellate Justice in the department to which he is designated, may hold any term of the Supreme Court and exercise any of the powers of a Justice of the Supreme Court in any county or judicial district in any other department of the State. From and after the last day of December eighteen hundred and ninety five, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its General Terms and by the General Terms of the Court of Common Pleas for the City and County of New York, the Superior Court of the City of New York, the Superior Court of Buffalo and the City of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter.

The Justices of the Appellate Division in each department shall have power to fix the times and places for holding Special Terms therein, and to assign the Justices in the departments to hold such terms; or to make rules therefor.

Const. 1846, art. VI, §§ 7 and 28, added in 1882, amended in 1904.

#### § 4. Terms of office; vacancies, how filled.

The official terms of the Justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of Justice of the Supreme Court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs, and, until the vacancy shall be so filled, the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Const. 1846, art. VI, §§ 2, 13.

#### § 5. City courts abolished; judges become justices of supreme court; salaries; jurisdiction vested in supreme court.

The Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York, the Superior Court of Buffalo, and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals,

records, papers and documents of or belonging to such courts, shall be deposited in the offices of the Clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The Judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the term for which they were elected or appointed, be Justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other Justices of the Supreme Court residing in the same counties. Their successors shall be elected as Justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished, shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the City and County of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such Justice or Justices as the Appellate Divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the Legislature.

New.

### **§ 7. Court of appeals.**

The Court of Appeals is continued. It shall consist of the Chief Judge and Associate Judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms of the Chief Judge and Associate Judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. Whenever and as often as a majority of the Judges of the Court of Appeals shall certify to the Governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the Governor shall designate not more than four Justices of the Supreme Court to serve as Associate Judges of Court of Appeals. The Justices so designated shall be relieved from their duties as Justices of the Supreme Court and shall serve as Associate Judges of the Court of Appeals until the causes undisposed of in said court are reduced to two hundred, when they shall return to the Supreme Court. The Governor may designate Justices of the Supreme Court to fill vacancies. No Justice shall serve as Associate Judge of the Court of Appeals except while holding the office of Justice of the Supreme Court, and no more than seven Judges shall sit in any case. [As amended in 1899.]

Const. 1846, art. VI, § 3, amended in 1869.

### **§ 8. Vacancy in court of appeals, how filled.**

When a vacancy shall occur otherwise than by expiration of term, in the office of Chief or Associate Judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor may fill such vacancy by appointment. If any such appointment of Chief Judge shall be made from among the Associate Judges, a temporary appointment of Associate Judge shall be made in like manner; but in such case, the person appointed Chief Judge shall not be deemed to vacate his office of Associate Judge any longer than until the expiration of his appointment as Chief Judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of Judges is sufficient to constitute a quorum. All appointments under this section shall continue until and

including the last day of December next after the election at which the vacancy shall be filled.

Const. 1846, art. VI, § 3, amended in 1868.

**§ 10. Judges not to hold any other office.**

The Judges of the Court of Appeals and the Justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

Const. 1846, art. VI, § 10, amended in 1868.

**§ 11. Removal of judges.**

Judges of the Court of Appeals and Justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except Justices of the Peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

Const. 1846, art. VI, § 11, amended in 1868.

**§ 12. Compensation; age restriction; assignment by governor.**

No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age. Each Justice of the Supreme Court shall receive from the state the sum of ten thousand dollars per year. Those assigned to the appellate divisions in the third and fourth departments shall each receive in addition the sum of two thousand dollars and the presiding Justices thereof the sum of two thousand five hundred dollars per year. Those Justices elected in the first and second judicial departments shall continue to receive from their respective cities, counties or districts, as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. Those Justices elected in any judicial department other than the first or second, and assigned to the appellate divisions of the first or second departments, shall, while so assigned, receive from those departments respectively, as now provided by law, such additional sum as is paid to the Justices of those departments. A Justice elected in the third or fourth department assigned by the appellate division or designated by the governor to hold a trial or special term in a judicial district other than that in which he is elected shall receive in addition ten dollars per day for expenses while actually so engaged in holding such term, which shall be paid by the state and charged upon the judicial district where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to said Justices for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the judges and justices now in office and to those hereafter elected.

Const. 1846, art. VI, §§ 12, 13, amended in 1868 and 1898.

**§ 13. Trial of impeachments.**

The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the President of the Senate, the senators or the major part of them, and the Judges of the Court of Appeals or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of im-

punishment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

Const. 1846, art. VI, § 1, amended in 1869.

#### § 14. County courts.

The existing county courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be four county judges. The number of county judges in any county may also be increased, from time to time, by the legislature, to such number that the total number of county judges in any one county shall not exceed one for every two hundred thousand, or major fraction thereof, of the population of such county. The additional county judges in the county of Kings shall be chosen at the general election held in the first odd-numbered year after the adoption of this amendment. The additional county judges whose offices may be created by the legislature shall be chosen at the general election held in the first odd-numbered year after the creation of such office. All county judges, including successors to existing judges, shall be chosen by the electors of the counties for the term of six years from and including the first day of January following their election. County courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only where the defendants reside in the county, and in which the complainant demands judgment for a sum not exceeding two thousand dollars. The legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of sessions, except in the county of New York, are abolished from and after the last day of December one thousand eight hundred and ninety-five. All the jurisdiction of the court of sessions in each county, except the county of New York, shall thereupon be vested in the county court thereof, and all actions and proceedings then pending in such courts of sessions shall be transferred to said county courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold county courts in any other county when requested by the judge of such other county.

Const. 1846 art. VI, § 15, amended in 1869.

Amended in 1913

#### § 15. Surrogates' courts; surrogates, their powers and jurisdiction; vacancies.

The existing surrogates' courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years except in the county of New York, where they shall continue to be fourteen years. Surrogates and surrogates' courts shall have the jurisdiction and powers which the surrogates and existing surrogates' courts now possess, until otherwise provided by the legislature. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the supreme court. The compensation of any county judge or surrogate shall not be increased or diminished during his term of office. For the relief of surrogates'





shall remain in force and be irrevocable, and be annually collected, until the bonds thereof shall have made the provision herebefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any such or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage or at any general election when any other law, or any bill shall be submitted to be voted for or against. The legislature may provide for the issue of bonds of the state to run for a period not exceeding fifty years in lieu of bonds heretofore authorized but not issued, and shall impose and provide for the collection of a tax, not to exceed one per cent of the income as then before required. When any sinking fund created by or for the state shall equal in amount the debt for which it was created no further direct tax shall be levied on a count of such sinking fund until the expiration of the tax to an amount equal to the amount levied on such debt. The legislature may from time to time alter the rate of interest to be paid upon any state debt which has been or may be authorized pursuant to the provisions of this article, or upon any part of such debt. It is provided, however, that the rate of interest shall not be altered upon any part of such debt or upon any bill or other evidence thereof which has been, or shall be created or issued before such alteration. In case the legislature to raise the rate of interest on a debt which is or part thereof is such, if such debt be payable otherwise than in cash, and such alteration is imposed and provided for the collection of a direct annual tax to pay and discharge the interest or altered interest of such debt as if it had been authorized to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof, and which shall be authorized to pay and discharge the principal of such debt when it shall become due and payable.

Const. 1846, art. VII, § 12, amended in 1900, 1900 and 1911.

#### ARTICLE X.

##### § 1. Sheriffs, clerks of counties, district attorneys and registrars; governor may remove.

Sheriffs, clerks of counties, district attorneys and registrars in counties having no sheriffs shall be elected by the electors of the respective counties, and in every three years and so often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, when such officers shall be chosen by the electors once in every two or four years as the legislature shall direct. Sheriffs shall hold office until the expiration of their term, and after the term of their offices they may be required by law to remove their counties from time to time, and in default of doing so, and now or until their offices shall be deemed vacant. But the term shall never be made to coincide for the sake of the staff. The governor may remove any officer in the counties mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

Const. 1846, art. X, § 1.

##### § 2. Appointment or election of officers, not provided for by this constitution.

All county officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.

Const. 1846, art. X, § 2.

##### § 3. Duration of term.

When the duration of any office is not provided by this Constitution it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Const. 1846, art. X, § 3.

##### § 4. Time of election.

The time of electing all officers named in this article shall be prescribed by law.

Const. 1846, art. X, § 4.



**§ 5. Vacancies in offices, how filled.**

The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Const. 1846, art. X, § 5.

**§ 6. Political year.**

The political year and legislative term shall begin on the first day of January, and the Legislature shall, every year, assemble on the first Wednesday in January.

Const. 1846, art. X, § 6.

**§ 7. Removal from office for misconduct, etc.**

Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

Const. 1846, art. X, § 7.

**§ 8. Office deemed vacant.**

The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this Constitution.

Const. 1846, art. X, § 8.

**ARTICLE XII.****§ 3. Election of city officers, when to be held; extension and abridgment of terms.**

All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd numbered year, and the term of every such officer shall expire at the end of an odd numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety five whose successors have not then been elected, which under existing laws would expire with an even numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

New.

**ARTICLE XIII.****§ 1. Oath of office.**

Members of the Legislature, and all officers executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ———."

according to the best of my ability; " and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money, or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

Const. 1846, art. XII, § 1, amended in 1874.

### § 2. Official bribery and corruption.

Any person holding office under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, anything of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

Const. 1846, art. XV, § 1, added in 1874.

### § 3. Offer or promise to bribe.

Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

Const. 1846, art. XV, § 2, added in 1874.

### § 4. Person bribed or offering a bribe may be a witness.

Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted, to testify in his own behalf in any civil or criminal prosecution therefor.

Const. 1846, art. XV, § 3, added in 1874.

### § 5. Free passes, franking privileges, etc., not to be received by public officer; penalty.

No public officer, or person elected or appointed to a public office, under the laws of this State, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the Attorney General. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation, giving any such free pass, free transportation, franking privilege or discrimination hereby

prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

New.

**§ 6. Removal of district attorney for failure to prosecute; expenses of prosecutions for bribery.**

Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the Governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this State within such county, or of receiving bribes by any such person in said county, shall be a charge against the State, and their payment by the State shall be provided for by law.

Const. 1846, art. XV, § 4, added in 1874.

**ARTICLE XIV.**

**§ 1. Amendments to constitution, how proposed, voted upon and ratified.**

Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

Const. 1846, art. XIII, § 1.

**§ 2. Future constitutional conventions; how called; election of delegates; compensation; quorum; submission of amendments; officers; rules; vacancies; taking effect.**

At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the conven-

tion, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at large, such vacancy shall be filled by a vote of the remaining delegates at large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

Const. 1846, art. XIII, § 2.

**§ 3. Amendments of convention and legislature submitted coincidentally.**

Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the Legislature, coincidentally submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the Legislature.

New.



**PART 8.**

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**UNITED STATES STATUTES**

**PROVISIONS CONCERNING**

**ELECTIONS, ELECTIVE OFFICERS, CITIZENSHIP, ETC.**





## ELECTION OF SENATORS.\*

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### Time of election.

At the regular election held in any state next preceding the expiration of the term for which any senator was elected to represent such state in congress, at which election a representative to congress is regularly by law to be chosen, a United States senator from said state shall be elected by the people thereof for the term commencing on the fourth day of March next thereafter.

38 Stat. at L. 354, § 1.

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\* See amendment to U. S. Constitution, ante, p. 294, providing for direct election of U. S. senators.



## APPORTIONMENT AND ELECTION OF REPRESENTATIVES.

(Act approved August 8, 1911.)

### Number of Representatives and Apportionment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after the third day of March, nineteen hundred and thirteen, the House of Representatives shall be composed of four hundred and thirty three members, to be apportioned among the several states as follows: Alabama, ten; Arkansas, seven; California, eleven; Colorado, four; Connecticut, five; Delaware, one; Florida, four; Georgia, twelve; Idaho, two; Illinois, twenty seven; Indiana, thirteen; Iowa, eleven; Kansas, eight; Kentucky, eleven; Louisiana, eight; Maine, four; Maryland, six; Massachusetts, sixteen; Michigan, thirteen; Minnesota, ten; Mississippi, eight; Missouri, sixteen; Montana, two; Nebraska, six; Nevada, one; New Hampshire, two; New Jersey, twelve; New York, forty three; North Carolina, ten; North Dakota, three; Ohio, twenty two; Oklahoma, eight; Oregon, three; Pennsylvania, thirty six; Rhode Island, three; South Carolina, seven; South Dakota, three; Tennessee, ten; Texas, eighteen; Utah, two; Vermont, two; Virginia, ten; Washington, five; West Virginia, six; Wisconsin, eleven; Wyoming, one.

Act of Aug. 8, 1911, § 1.

### Representatives from Arizona and New Mexico.

That if the Territories of Arizona and New Mexico shall become States in the Union before the apportionment of Representatives under the next decennial census they shall have one Representative each; and if one of such Territories shall so become a State, such State shall have one Representative, which Representative or Representatives shall be in addition to the number four hundred and thirty three, as provided in section one of this Act, and all laws and parts of laws in conflict with this section are to that extent hereby repealed.

Id., § 2.

### Districts.

That in each State entitled under this apportionment to more than one Representative, the Representatives to the Sixty third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants. The said districts shall be equal to the number of Representatives to which such State may be entitled in Congress, no district electing more than one Representative.

Id., § 3.

### Elections where increase of Representatives.

That in case of an increase in the number of Representatives in any State under this apportionment such additional Representative or Representatives shall be elected by the State at large and the other Representatives by the districts now prescribed by law until such State shall be readjusted in the manner provided by the laws thereof and in accordance with the rules enumerated in section three of this Act; and if there be no change in the

number of Representatives from a State, the Representatives thereof shall be elected from the districts now prescribed by law until such State may be redistricted as herein prescribed.

Id., § 4.

#### **Nomination of Representatives at Large**

The candidates for Representative or Representatives to be elected at large in any State shall be nominated in the same manner as candidates for governor, unless otherwise provided by the laws of such State.

Id., § 5.

#### **Reduction of representation under amendment 14.**

Should any State deny or abridge the right of any of the male inhabitants thereof, being twenty one years of age, and citizens of the United States to vote at any election named in the amendment to the Constitution, article fourteen, section two, except for participation in the rebellion or other crime the number of Representatives apportioned to such State shall be reduced in the proportion which the number of such male citizens shall have to the whole number of male citizens twenty one years of age in such State.

U. S. R. S., § 22.

#### **Time of election.**

The Tuesday next after the first Monday in November, in the year eighteen hundred and seventy six, is established as the day, in each of the States and Territories of the United States, for the election of Representatives and Delegates to the Forty fifth Congress, and the Tuesday next after the first Monday in November, in every second year thereafter is established as the day for the election, in each of said States and Territories, of Representatives and Delegates to the Congress commencing on the fourth day of March next thereafter.

U. S. R. S., § 23.

#### **Vacancies.**

The time for holding elections in any State, District, or Territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

U. S. R. S., § 24.

#### **Votes by ballot or voting machines.**

All votes for Representatives in Congress must be by written or printed ballot or voting machine the use of which has been duly authorized by the State law, and all votes received or recorded contrary to this section shall be of no effect.

U. S. R. S., § 27.

## PRESIDENTIAL ELECTIONS.

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### **Time of appointing electors.**

Except in case of a presidential election prior to the ordinary period, as specified in sections one hundred and forty-seven to one hundred and forty-nine, inclusive, when the offices of President and Vice President both become vacant, the electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.

U. S. R. S., § 131.

### **Number of electors.**

The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office, except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

U. S. R. S., § 132.

### **Vacancies in electoral college.**

Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

U. S. R. S., § 133.

### **Failure to make a choice on the appointed day.**

Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the Legislature of such State may direct.

U. S. R. S., § 134.

### **Meeting and vote of electors.**

Be it enacted, etc., That the electors of each State shall meet and give their votes on the second Monday in January next following their appointment, at such place in each State as the Legislature of such State shall direct.

Act Feb. 3, 1887, ch. 90. 24 Stat. L. 373, § 1.

### **Determination of controversy as to appointment of electors.**

That if any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to the



said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

*Id.*, § 2.

**Certificates of appointment of electors, and of determination of controversy.**

That it shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of electors in such State, by the final ascertainment under and in pursuance of the laws of such State providing for such ascertainment, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast, and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by the preceding section to meet, the same certificate, in triplicate, under the seal of the State, and such certificate shall be inclosed and transmitted by the electors at the same time and in the same manner as is provided by law for transmitting by such electors to the seat of Government the lists of all persons voted for as President and of all persons voted for as Vice-President, and ~~section one hundred and thirty six of the Revised Statutes is hereby repealed~~; and if there shall have been any final determination in a State of a controversy or contest as provided for in section two of this act, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such determination, in form and manner as the same shall have been made; and the Secretary of State of the United States, as soon as practicable after the receipt at the State Department of each of the certificates hereinbefore directed to be transmitted to the Secretary of State, shall publish, in such public newspaper as he shall designate, such certificates in full, and at the first meeting of Congress thereafter he shall transmit to the two Houses of Congress copies in full of each and every such certificate so received theretofore at the State Department.

*Id.*, § 3.

**Manner of voting.**

The electors shall vote for President and Vice-President, respectively, in the manner directed by the Constitution.

U. S. R. S., § 137.

**Certificates to be made and signed.**

The electors shall make and sign three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President, and the other of the votes for Vice-President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State.

U. S. R. S., § 138.

**Certificates to be sealed and indorsed.**

The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice-President, are contained therein.

U. S. R. S., § 139.

**Transmission of the certificates.**

The electors shall dispose of the certificates thus made by them in the following manner:

One. They shall, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and deliver to the President of the Senate, at the seat of Government, before the first Wednesday in January then next ensuing, one of the certificates.

Two. They shall forthwith forward by the post-office to the President of the Senate, at the seat of Government, one other of the certificates.

Three. They shall forthwith cause the other of the certificates to be delivered to the judge of that district in which the electors shall assemble.

U. S. R. S., § 140.

#### **Time for transmission of the certificates to the President of the Senate.**

Be it enacted, &c., That the certificates and lists of votes for President and Vice-President of the United States, mentioned in chapter one of title three of the Revised Statutes of the United States, and in the act to which this is a supplement, shall be forwarded, in the manner therein provided, to the President of the Senate forthwith after the second Monday in January, on which the electors shall give their votes.

Act Oct 19, 1888, ch. 1216, 25 Stat. L. 613, § 1.

#### **When Secretary of State shall send for District Judge's list.**

Whenever a certificate of votes from any State has not been received at the seat of Government on the fourth Monday of the month of January in which their meeting shall have been held, the Secretary of State shall send a special messenger to the district judge in whose custody one certificate of the votes from that State has been lodged, and such judge shall forthwith transmit that list to the seat of the Government.

U. S. R. S., § 141.

#### **Provision for absence of President of the Senate.**

In case there shall be no President of the Senate at the seat of Government on the arrival of the persons intrusted with the certificates of the votes of the electors, then such persons shall deliver such certificates into the office of the Secretary of State, to be safely kept, and delivered over as soon as may be to the President of the Senate.

U. S. R. S., § 143.

#### **Mileage of messengers.**

Each of the persons appointed by the electors to deliver the certificates of votes to the President of the Senate shall be allowed, on the delivery of the lists intrusted to him, twenty five cents for every mile of the estimated distance, by the most usual road, from the place of meeting of the electors to the seat of Government of the United States.

U. S. R. S., § 144.

#### **Forfeiture for messenger's neglect of duty.**

Every person who having been appointed pursuant to subdivision one of section one hundred and forty or to section one hundred and forty-one, to deliver the certificates of the votes of the electors to the President of the Senate, and having accepted such appointment, shall neglect to perform the services required from him, shall forfeit the sum of one thousand dollars.

U. S. R. S., § 145.

#### **Vacancy in office of both President and Vice-President.**

Be it enacted, &c., That in case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation or inability, then the Secretary of the Treasury or if there be none or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability,

then the Attorney General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice President is removed or a President shall be elected. Provided, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accord-ance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting.

Act Jan. 19, 1886, ch. 4, 24 Stat. L. 1, § 1.

#### **Eligibility of officers to act as President.**

That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively.

Id., § 2

#### **Resignation or refusal of office.**

The only evidence of a refusal to accept, or of a resignation of the office of President or Vice President shall be an instrument in writing declaring the same and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State.

U. S. R. S., § 151.

## STATE OFFICERS.

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### **Oath by members of State legislatures and State officers.**

Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: "I, A B, do solemnly swear that I will support the Constitution of the United States."

U. S. R. S., § 1836.

### **By whom administered.**

Such oath may be administered by any person who, by the law of the state, is authorized to administer the oath of office, and the person so administering such oath shall cause a record or certificate thereof to be made in the same manner as, by the law of the State, he is directed to record or certify the oath of office.

U. S. R. S., § 1837.

## CIVIL RIGHTS.

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### **Conspiracy.**

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

U. S. R. S., § 1980.

### **Action for neglect to prevent conspiracy.**

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act or neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

U. S. R. S., § 1981.

## CITIZENSHIP.

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### **Who are citizens.**

All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

U. S. R. S., § 1992.

### **Citizenship of children of citizens born abroad.**

All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

U. S. R. S., § 1993.

### **Citizenship of married women.**

Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

U. S. R. S., § 1994.

### **Of persons born in Oregon.**

All persons born in the district of country formerly known as the Territory of Oregon, and subject to the jurisdiction of the United States on the 18th May, 1872, are citizens in the same manner as if born elsewhere in the United States.

U. S. R. S., § 1995.

### **Rights of citizens forfeited for desertion, etc.**

All persons who deserted the military or naval services of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their rights to become citizens; and such deserters shall be forever incapable of holding any office of trust and profit under the United States, or of exercising any rights of citizens thereof.

U. S. R. S., § 1996.

### **Certain soldiers and sailors not to incur the forfeitures of the last section.**

No soldier or sailor, however, who faithfully served according to his enlistment until the 10th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

U. S. R. S., § 1997.



**Avoiding the draft.**

Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section thirteen hundred and eighty-six of the revised statutes of the United States. Provided, that the provisions of this section and section thirteen hundred and ninety-six shall not apply to any person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, if he is not, called or recalled by the president where the offense was committed, or if he is, called or recalled where the exercise of such calling will not be prejudicial to the public interests. And provided further, That the provisions of section thirteen hundred and eighty-six of the revised statutes of the United States that a deserter from the military service of the United States shall be enlisted or mustered into the military service, and the provisions of section two of the Act of Congress approved August first, eighteen hundred and ninety-four, entitled "An act to regulate enlistments in the army of the United States," shall not be construed to prohibit the reenlistment or muster in to the army of any person who has deserted, or may hereafter desert, from the military service of the United States, if a time of peace, or of any other where service during his last preceding term of enlistment has not been honest and faithful, wherever the reenlistment or muster into the military service of such person or soldier shall, in view of the good conduct of such person or soldier subsequent to such desertion or service, be authorized by the secretary of war.

U. S. R. S., § 1398, as amended by 37 Stat. L. 276

**Right of expatriation declared.**

Whereas the right of expatriation is a natural and inherent right of all people independent to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle the Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, who have become aliens and subjects of foreign states, owing allegiance to the government thereof, and whereas it is necessary to the maintenance of public peace and the calm of foreign allegiance should be promptly and finally disavowed. Therefore any declaration, instruction, order, or decision of any officer of the United States which denies, tests, inquires, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

U. S. R. S., § 1399.

**When American citizen deemed to have expatriated himself.**

That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, he shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years. Nevertheless, that such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under the rules and regulations as the Department of State may prescribe. And provided also, That no American citizen shall be allowed to expatriate himself when the country is at war.

Act of March 2, 1907, ch. 2534, 34 Stat. L. 1229, § 2

**Expatriation of married women.**

That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

Id., § 3.

**Same.**

That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize. If she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of each marital relation.

Id., § 4.

**Citizenship of child born without United States of alien parents.**

That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization laws.

resumption of American citizenship by the parent: Provided, That such naturalization or resumption takes place during the minority of such child. And provided further, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

Id., § 5.

#### **Citizenship of children of citizens born abroad.**

That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety three of the Revised Statutes of the United States shall and who continue to reside outside of the United States shall in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

Id., § 6.

#### **Filing of duplicates of evidence, etc.**

That duplicates of any evidence registration, or other acts required by this act shall be filed with the Department of State for record.

Id., § 7.

An Act defining the status of citizens of the United States who have entered the military or naval service of certain countries during the existing war in Europe.

Any person formerly an American citizen, who may be deemed to have expatriated himself under the provisions of the first paragraph of section two of the Act approved March second, nineteen hundred and seven, entitled "An Act in reference to the expatriation of citizens and their protection abroad," by taking, since August first, nineteen hundred and fourteen, an oath of allegiance to any foreign State engaged in war with a country with which the United States is at war, and who took such oath in order to be enabled to enlist in the armed forces of such foreign State, and who actually enlisted in such armed forces, and who has been or may be duly and honorably discharged from such armed forces, may, upon complying with the provisions of this Act, reassume and acquire the character and privileges of a citizen of the United States; Provided, however, That no obligation in the way of pensions or other grants, because of service in the army or navy of any other country, or disabilities incident thereto, shall accrue to the United States.

Any such person who desires so to reacquire and reassume the character and privileges of a citizen of the United States shall, if abroad, present himself before a consular officer of the United States, or, if in the United States, before any court authorized by law to confer American citizenship upon aliens, shall offer satisfactory evidence that he comes within the terms of this Act, and shall take an oath declaring his allegiance to the United States and agreeing to support the Constitution thereof and abjuring and disclaiming allegiance to such foreign State and to every foreign prince, potentate, State, or sovereignty. The consular officer or court officer having jurisdiction shall thereupon issue in triplicate a certificate of American citizenship, giving one copy to the applicant, retaining one copy for his files, and forwarding one copy to the Secretary of Labor. Thereafter such person shall in all respects be deemed to have acquired the character and privileges of a citizen of the United States. The Secretary of State and the Secretary of Labor shall jointly issue regulations for the proper administration of this act.

Act Oct. 3, 1917, c. 68.

# FEDERAL NATURALIZATION LAW.

## An Act to create a Department of Labor.

(Approved March 4, 1913.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created an executive department in the Government to be called the Department of Labor, with a Secretary of Labor, who shall be the head thereof, to be appointed by the President, by and with the advice and consent of the Senate;

§ 3. That the following-named offices, bureaus, divisions, and branches of the public service now and heretofore under the jurisdiction of the Department of Commerce and Labor, and all that pertain to the same, known as the Bureau of Immigration and Naturalization, be, and the same hereby are, transferred from the Department of Commerce and Labor to the Department of Labor at the same shall hereafter remain under the jurisdiction and supervision of the last named department. The Bureau of Immigration and Naturalization is hereby divided into two bureaus, to be known hereafter as the Bureau of Immigration and the Bureau of Naturalization, and the titles Chief Division of Naturalization and Assistant Chief shall be Commissioner of Naturalization and Deputy Commissioner of Naturalization. The Commissioner of Naturalization or, in his absence, the Deputy Commissioner of Naturalization shall be the administrative officer in charge of the Bureau of Naturalization and of the administration of the naturalization laws under the immediate direction of the Secretary of Labor, to whom he shall report directly upon all naturalization matters annually and as otherwise required.

An Act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States.

Be it enacted by the senate and house of representatives of the United States of America in Congress assembled,

§ 3 That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified State, Territorial, and Federal shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Naturalization with such blank forms as may be required in the naturalization of aliens and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau.

§ 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by

this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: **Provided, however,** That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration:

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived, the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife, and, if possible, the country of her nativity and her place of residence at the time of filing his petition, and if he has children, the name, date and place of birth and place of residence of each child living at the time of the filing of his petition: **Provided,** That if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credit witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or District of Columbia in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Labor, if the petitioner arrives in the United States after the passage of this Act stating the date, place and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he

absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject, that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requirements, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is a fully naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the arms of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom or while en route to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time that country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; any alien volunteer who has served in the United States Army or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States

<sup>1</sup> Section four of the act entitled "An act to establish a Bureau of Immigration and Naturalization and to provide a uniform rule for the naturalization of aliens within the United States," approved June 29th, 1906, was amended by the act of May 3, 1914 (Pub. No. 144, 63th Cong.), by adding seven new subdivisions.



on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in those cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization, and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings, and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States, and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, attesting the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed, and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien who, at the time of the passage of this act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization. Such affidavits and oath of allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavits and oath of allegiance were taken, and shall be filed by the representative of the Government from the Bureau of Naturalization at the hearing as provided by section eleven of the act of June twenty-ninth, nineteen hundred and six. Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relating to the administration of the naturalization law; and the requirement of section ten of notice to take deposit as to the United States attorneys is repealed, and the duty they perform under section fifteen of the act of June twenty-ninth, nineteen hundred and six (Thirty-fourth Statutes at Large, part one, page five hundred and ninety six) may also be performed by the Commissioner or Deputy Commissioner of Naturalization. **Provided,** That it shall not be lawful to make a declaration of intention before



the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court. Provided further, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and an alien can not secure residence for naturalization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for this service unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A full accounting for all of these transactions shall be made to the Bureau of Naturalization in the manner provided by section thirteen of the act of June twenty-ninth, nineteen hundred and six.

Eight. That every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: Provided, That nothing contained in this act shall be taken or construed to repeal or modify any portion of the act approved March fourth, nineteen hundred and fifth (thirty-ninth Statutes at Large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an act to promote the welfare of American seamen.

Ninth. That for the purpose of carrying on the work of the Bureau of Naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this act, no authority is hereby given for the reimbursement of the printing and binding appropriation of the Department of Labor upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Bureau of Naturalization for the cost of publishing the citizenship textbooks prepared and to be distributed by the Bureau of Naturalization to these candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the Commissioner of Naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and cooperate with the official State and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to and the local Army exemption boards and cooperate with the War Department in locating declarants subject to the Army draft and expenses incidental thereto.

Tenth. That any person not an alien enemy who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by law, and who during or prior to that time been in the use of misinformation regarding his citizenship status, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law.

Eleventh. No alien who is a native, citizen, subject, or denizen of any

country, State, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject. **Provided,** That no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard except after ninety days' notice given by the clerk of the court to the Commissioner or Deputy Commissioner of Naturalization to be present and the petition shall be given no final hearing except in open court and after such notice to the representative of the Government from the Bureau of Naturalization, whose objection shall cause the petition to be continued from time to time for so long as the Government may require. **Provided, however,** That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien, and section twenty one hundred and seventy one of the Revised Statutes of the United States is hereby repealed. **Provided further,** That the President of the United States may in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization, and for the purposes of carrying into effect the provisions of this section including personal services in the District of Columbia, the sum of \$400,000 is hereby appropriated, to be available until June thirtieth, nineteen hundred and nineteen, including travel expenses for members of the Bureau of Naturalization and its field service only, and the provisions of section thirty six hundred and seventy nine of the Revised Statutes shall not be applicable in any way to this appropriation.

**Twelfth.** That any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any State authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the Department of State and the Bureau of Naturalization, and the act (Public fifty five, Sixty fifth Congress, approved October fifth nineteen hundred and seventeen) is hereby repealed.

**Thirteenth.** That any person who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who before the termination of the existing war may have been honorably discharged from the military or naval services of the United States on account of disability incurred in line of duty, shall, if he applies to the proper court for admission as a citizen of the United States be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the State, Territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law.

§ 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate

hearing, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, of the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf, and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

§ 6 That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition. Provided, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful at the time and as a part of the naturalization of any alien in this court, in its discretion, upon the petition of such alien, to make a record changing the name of said alien, and his certificate of naturalization shall be so noted to conform therewith.

§ 7 That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization, organization, and teaching such as belief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the overthrow or destruction of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

§ 8 That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language. Provided, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States. And provided further, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration. Provided further, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

§ 9 That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in and upon a record kept for this purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

§ 10 That in case the petitioner has not resided in the State, Territory, or District of Columbia for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both sworn to before and at the hearing, the time of his residence within the State, provided that it has been for not less than one year, and the remaining portion of the five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Naturalization.

§ 11 That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

§ 12 That it is hereby made the duty of the clerk of each and every

\* The word "District" amended by the Act of May 2, 1918, to read "the District of Columbia."

court exercising jurisdiction in naturalization matters under the provisions of this Act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Naturalization at Washington within thirty days after the issuance of a certificate of citizenship, a duplicate of each certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who has been denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of and other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said Bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Naturalization, and shall account for the same to the said Bureau whenever required so to do by said Bureau. No certificate of citizenship received by any such clerk which may be lost or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said Bureau, and in case any such clerk shall fail to return or properly account for any certificate furnished by the said Bureau as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

A clerk at the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereon, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in each naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Naturalization, and pay over to such Bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Labor who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required the petitioner shall, upon the filing of his petition, to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue if any, shall be returned by the clerk to the petitioner. Provided, That the clerks of courts exercising jurisdiction in

<sup>1</sup> Section 13 as amended by Act June 25, 1910.

<sup>2</sup> See last paragraph of seventh subdivision of § 4, regarding fee to be paid by alien in military service who files petition during time the United States is at war.

naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said Bureau as in case of other fees in which the United States may be entitled under the provisions of this Act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon the clerks of courts from fees received by such clerks in naturalization proceedings.

And in case the clerk of any court exercising naturalization jurisdiction collects fees in excess of the sum of six thousand dollars in any fiscal year the Secretary of Labor may allow salaries, for naturalization purposes only, to pay for clerical assistance, to be selected and employed by that clerk, additional to the clerical force, for which clerks of courts are required by this section to pay from fees received by such clerks in naturalization proceedings, if in the opinion of said Secretary the naturalization business of such clerk warrants further additional assistance: Provided, That in no event shall the whole amount allowed the clerk of a court and his assistants exceed the one-half of the gross receipts of the office of said clerk from naturalization fees during such fiscal year. Provided further, That when, at the close of any fiscal year, the business of such clerk of court indicates in the opinion of the Secretary of Labor that the naturalization fees for the succeeding fiscal year will exceed six thousand dollars the Secretary of Labor may authorize the continuation of the allowance of salaries for the additional clerical assistance herein provided for and employed on the last day of the fiscal year until such time as the remittances indicate in the opinion of said Secretary that the fees for the then current fiscal year will not be sufficient to allow the additional clerical assistance authorized by this Act.

That payment for the additional clerical assistance herein authorized shall be in the manner and under such regulations as the Secretary of Labor may prescribe.

§ 14 That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

§ 15 That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country and take permanent residence therein, it shall be considered prima facie evidence of a lack of intent in on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship; and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of



The United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Naturalization, and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same on record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

§ 16. [Repealed by act of March 4, 1909. See act to codify, revise and amend the penal laws of the United States, post.]

§ 17. [Repealed by act of March 4, 1909. See act to codify, revise and amend the penal laws of the United States, post.]

§ 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this Act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

§ 19. [Repealed by act of March 4, 1909. See act to codify, revise and amend the penal laws of the United States, post.]

§ 20. That any clerk or other officer of a court having power under this Act to naturalize aliens, who willfully neglects to render true accounts of moneys received by him for naturalization proceedings or who willfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

§ 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, or to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified, and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

§ 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this Act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this Act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.



§ 23. That any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

§ 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

§ 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect.

§ 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed.

§ 27 That substantially the following forms shall be used in the proceedings to which they relate:

#### Declaration of Intention.

(Invalid for all purposes seven years after the date hereof.)

....., ss:

I, ....., aged ..... years, occupation ....., do declare on oath (affirm) that my personal description is: Color ....., complexion ....., height ....., weight ....., color of hair ....., color of eyes ....., other visible distinctive marks .....; I was born in ....., on the ..... day of ....., anno Domini .....; I now reside at .....; I emigrated to the United States of America from ..... on the vessel .....; my last foreign residence was ..... It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ....., of which I am now a citizen (subject); I arrived at the (port) of ....., in the State (Territory or District of Columbia) of ....., on or about the ..... day of ....., anno Domini .....; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me (God).

(Original signature of declarant) .....

Subscribed and sworn to (affirmed) before me this ..... day of ....., anno Domini .....

[L.S.]

(Official character of attestor.)

#### Petition for Naturalization.

..... Court of .....

In the matter of the petition of ..... to be admitted as a citizen of the United States of America.

To the ..... Court:

The petition of ..... respectfully shows:

First. My full name is .....  
 Second. My place of residence is number ..... street,  
 city of ..... State (Territory or District of Columbia) of

Third. My occupation is .....

Fourth. I was born on the ..... day of ..... at .....

Fifth. I emigrated to the United States from ..... on or about  
 the ..... day of ..... anno Domini ..... and arrived at the  
 port of ..... in the United States, on the vessel .....

Sixth. I declared my intention to become a citizen of the United States on  
 the ..... day of ..... at ..... in the ..... court of .....

Seventh. I am married. My wife's name is ..... She  
 was born in ..... and now resides at ..... I have  
 children, and the name, date, and place of birth and place of residence of each  
 of said children is as follows: .....

Eighth. I am not a doubter in or opposed to organized government or a  
 member of or affiliated with any organization or body of persons holding any  
 belief in organized government. I am not a polygamist nor a believer in the  
 practice of polygamy. I am attached to the principles of the Constitution of  
 the United States, and it is my intention to become a citizen of the United  
 States and to renounce absolutely and forever all allegiance and fidelity to  
 any foreign prince, potentate, state, or sovereignty and particularly to  
 ..... of which at this time I am a citizen (or subject), and it is  
 my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a  
 term of five years at least immediately preceding the date of this petition,  
 to wit, since ..... anno Domini ..... and in the State (Territory or District of Columbia) of ..... for one year at least next pre-  
 ceding the date of this petition, to wit, since ..... day of  
 anno Domini .....

Eleventh. I have not heretofore made petition for citizenship to any court  
 (I made petition for citizenship to the ..... court of ..... at .....  
 and the said petition was denied by the said court for the following reasons  
 and causes, to wit, ..... and the cause of such denial has  
 since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of  
 intention to become a citizen of the United States and the certificate from the  
 Department of Labor required by law. Wherefore your petitioner prays that  
 he may be admitted a citizen of the United States of America.

Dated .....

(Signature of petitioner) .....

....., being duly sworn, deposes and says that he is the  
 petitioner in the above-entitled proceeding; that he has read the foregoing  
 petition and knows the contents thereof; that the same is true of his own  
 knowledge, except as to matters therein stated to be alleged upon information  
 and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this ..... day of ..... anno  
 Domini .....

(1.8)

Clerk of the ..... Court.

#### Affidavit of Witnesses.

Court of .....

In the matter of the petition of ..... to be admitted a citizen  
 of the United States of America.

....., occupation ..... residing at ..... and  
 ..... occupation ..... residing at ..... each being severally,  
 duly and respectively sworn, depose and say that he is a citizen of the  
 United States of America, that he has personally known .....

the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the State (Territory or District of Columbia) in which the above entitled application is made for a period of \_\_\_\_\_ years immediately preceding the date of filing his petition, and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_.

[L. S.]

(Official character of attester.)

### Certificate of Naturalization.

Number \_\_\_\_\_

Petition, volume \_\_\_\_\_, page \_\_\_\_\_

Stub, volume \_\_\_\_\_, page \_\_\_\_\_

(Signature of holder)

Description of holder: Age, \_\_\_\_\_, height, \_\_\_\_\_, color, \_\_\_\_\_; complexion, \_\_\_\_\_, color of eyes, \_\_\_\_\_; color of hair, \_\_\_\_\_; visible distinguishing marks, \_\_\_\_\_ Name, age, and place of residence of wife, \_\_\_\_\_ Names, ages, and places of residence of minor children, \_\_\_\_\_

Be it remembered, that at a \_\_\_\_\_ term of the \_\_\_\_\_ court of \_\_\_\_\_, held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord nineteen hundred and \_\_\_\_\_, who previous to his (her) naturalization was a citizen or subject of \_\_\_\_\_ at present residing at number \_\_\_\_\_ street, \_\_\_\_\_ city (town), \_\_\_\_\_ State (Territory or District of Columbia), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the bearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that \_\_\_\_\_ he was entitled to be so admitted, it was thereupon ordered by the said court that \_\_\_\_\_ he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereto affixed on the day of \_\_\_\_\_, in the year of our Lord nineteen hundred and \_\_\_\_\_, and of our independence the \_\_\_\_\_.

[L. S.]

(Official character of attester.)

### Stub of Certificate of Naturalization.

No. of certificate, \_\_\_\_\_

Name, \_\_\_\_\_; age, \_\_\_\_\_

Declaration of intention, volume \_\_\_\_\_, page \_\_\_\_\_

Petition, volume \_\_\_\_\_, page \_\_\_\_\_

Name, age, and place of residence of wife, \_\_\_\_\_ Names, ages, and places of residence of minor children, \_\_\_\_\_

Date of order, volume \_\_\_\_\_, page \_\_\_\_\_

(Signature of holder)

§ 28 That the Secretary of Labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this Act. Certified copies of all papers, documents,

certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this Act shall be admitted in evidence equally with the originals in any and all proceedings under this Act and in all cases in which the originals thereof might be admissible as evidence.

§ 29. That for the purpose of carrying into effect the provisions of this Act there is hereby appropriated the sum of one hundred thousand dollars, out of any moneys in the Treasury of the United States not otherwise appropriated, which appropriation shall be in full for the objects hereby expressed until June thirtieth, nineteen hundred and seven, and the provisions of section thirty six hundred and seventy nine of the Revised Statutes of the United States shall not be applicable in any way to this appropriation.

§ 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States with the following modifications. The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

§ 31. That this Act shall take effect and be in force from and after thirty days from the date of its passage. *Provided*, that sections one, two, three, eight, and twenty nine shall go into effect from and after the passage of this Act.

Approved June 29 1906.

An act providing for the naturalization of the wife and minor children of insane aliens making homestead entries under the land laws of the United States. App'd Feb 24, 1911.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when any alien, who has declared his intention to become a citizen of the United States, becomes insane before he is actually naturalized, and his wife shall thereafter make a homestead entry under the land laws of the United States, she and their minor children may, by complying with the other provisions of the naturalization laws, be naturalized without making any declaration of intention.

### UNREPEALED UNITED STATES REVISED STATUTES\*

(In regard to the acquisition of citizenship by other means than naturalization, see secs. 1932 to 1935, inclusive, of the United States Revised Statutes. See, also, sec. 2172 of the Revised Statutes.)

#### § 2169. (As amended, 1875.) Aliens of African nativity and descent.

The provisions of this title shall apply to all persons being free white persons, and to aliens of African nativity and to persons of African descent.

#### § 2170. Residence within the United States required for five years continuously.

No alien shall be admitted to become a citizen who has not for the continuous term of five years next preceding his admission resided within the United States.

#### § 2172. Children of persons naturalized under certain laws to be citizens.

The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the States under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the Legislature of the State in which such person was proscribed.

\* For sections repealed, see Act of June 29, 1906, and Act of May 9, 1918.

† The United States Circuit Court of Appeals has held that this section was not repealed by the naturalization act of June 29, 1906. (800 United States v. Rodick, 102 Fed. 409.)

### NATURALIZATION OF DECLARANTS WHO HAVE SERVED IN THE NAVAL RESERVE FORCE IN TIME OF WAR.

[Act of May 22, 1917.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, be, and the same is hereby, amended by adding after the proviso under the heading "Naval Reserve Force," which reads as follows: "Provided, That citizens of the insular possessions of the United States may enroll in the Naval Auxiliary Reserve," a further proviso as follows: "Provided further, That such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of countries which are at peace with the United States, may enroll in the Naval Reserve Force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the Secretary of the Navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the Naval Reserve Force in time of war for a period of not less than one year may become citizens of the United States with all proof of residence on shore and without further requirement than proof of good moral character and certificate from the Secretary of the Navy that such honorable service was actually rendered. (Public Laws, 65th Cong. 1st Sess., 1917, p. 84.)

### ALIENS HONORABLY DISCHARGED FROM MILITARY OR NAVAL FORCES OF THE UNITED STATES AFTER SERVICE DURING THE PRESENT WAR.

[Public, No. 21, 68th Cong., approved July 19, 1919.]

Any person of foreign birth who served in the military or naval forces of the United States during the present war, after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, shall have the benefits of the seventh and eighth sections 4, of the Act of June 26, 1906, 34 Statutes at Large, part 1, page 57, as amended, and shall not be required to pay any fee therefor, and this provision shall continue for the period of one year after all of the American troops are returned to the United States.

### TWENTY-SECOND STATUTES AT LARGE, PAGE 61.

#### § 14. Naturalization of Chinese prohibited.

That hereafter no State court or court of the United States shall admit Chinese to citizenship, and all laws in conflict with this act are hereby repealed. (Act of May 6, 1882.)

### NATURALIZATION OF DESERTERS OR PERSONS WHO GO ABROAD TO AVOID DRAFT PROHIBITED.

[Act of August 22, 1912.]

Sec. 3954. [Amending Sec. 1906, U. S. R. S.] Every person who hereafter deserts the military or naval service of the United States or who is being duly enrolled, drafts the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 1906 of the Revised Statutes; Provided, That the provisions of this section and section 1906 (if drafted) shall not apply to any person who reënters deserting the military or naval service of the United States in time of peace. \* \* \*. (Comp. Stat. 1910, p. 4829.)

[Act of March 3, 1865.]

Sec. 1696. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a proper civil authority within sixty days after the expiration of the proclamation by the President, dated the thirtieth day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or for exercising any rights of citizen thereof. (R. S. 1878, p. 359, 1 Comp. Stat. Vol. 1, p. 129.)

### DEBARRING FROM NATURALIZATION CERTAIN ALIENS WHO MAY WITH- DRAW THEIR DECLARATIONS OF INTENTION TO AVOID MILITARY SERVICE.

[Act of July 9, 1918.]

\* \* \* Provided, That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service ~~when~~ <sup>and</sup> making a declaration of intention with such intentions as the President may prescribe with respect to intention to become a citizen of the United States, which shall, ~~operate~~ <sup>operate</sup> and shall prevent his declaration of intention to become an American citizen, and he shall forever be debarred from becoming a citizen of the United States. \* \* \*. (49 Stat. L., pt. 1, p. 885.)



**RELATING TO SECTION 12 OF THE ACT OF JUNE 29, 1906, AS AMENDED  
AMENDED JUNE 25, 1910.**

[Act of June 12, 1917.]

\* \* \* Provided, That the whole amount allowed for a fiscal year to the clerk of a court and his assistants from naturalization fees and this appropriation or any similar appropriation made hereafter shall be based upon and not exceed the one-half of the gross receipts of said clerk from naturalization fees during the fiscal year immediately preceding, unless the naturalization business of the clerk of any court during the year shall be in excess of the naturalization business of the preceding year, in which event the amount allowed may be increased to an amount equal to one-half the estimated gross receipts of the said clerk from naturalization fees during the current fiscal year: \* \* \* (40 Stat. L., pt. 1, p. 171.)

**OFFICIAL MAIL TO BE FORWARDED BY CLERKS OF COURTS TO BUREAU  
FREE OF POSTAGE, AND BY REGISTERED MAIL IF NECESSARY.**

[Act of October 6, 1917.]

\* \* \* That all mail matter, of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Bureau of Naturalization by clerks of State or Federal courts, addressed to the Department of Labor, or the Bureau of Naturalization, or to any official thereof, and indorsed "Official Business," shall be transmitted free of postage, and by registered mail if necessary, and so marked: Provided further, That if any person shall make use of such indorsement to avoid payment of postage or registry fee on his or her private letter, package, or other matter in the mail, the person so offending shall be guilty of a misdemeanor and subject to a fine of \$300, to be prosecuted in any court of competent jurisdiction.

(Pub. Laws, 65th Cong., 1st sess., 1917, p. 376. Postal Laws and Regs., sec. 273, par. 3½, and sec. 493, par. 2.)

**VALIDATING CERTAIN CERTIFICATES OF NATURALIZATION WHERE  
DECLARATIONS WERE FILED PRIOR TO SEPTEMBER 27, 1906.**

[Act of May 9, 1918.]

Sec. 2. That all certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned but shall not be by this act further validated or legalized.

**ACTS TO VALIDATE CERTAIN CERTIFICATES OF NATURALIZATION.**

[Act of June 29, 1906.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That naturalization certificates issued after the act approved March third, nineteen hundred and three, entitled "An act to regulate the immigration of aliens into the United States," went into effect, which fail to show that the courts issuing said certificates complied with the requirements of section thirty-nine of said act, but which were otherwise lawfully issued, are hereby declared to be as valid as though said certificates complied with said section: Provided, That in all such cases application shall be made for new naturalization certificates, and when the same are granted, upon compliance with the provisions of said act of nineteen hundred and three, they shall relate back to the defective certificates, and citizenship shall be deemed to have been perfected at the date of the defective certificate.

§ 2. That all the records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the time when this act takes effect in or from the criminal court of Cook county, Illinois, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this act further validated or legalized.

(Stat. 1905-6, Part I, p. 630.)

**ACT OF AUGUST 24, 1912.**

Sec. 9. All of the records relating to naturalization or declarations of intention to become citizens of the United States and all certificates of naturalization filed, recorded, or issued prior to an Act to validate certain certificates of naturalization approved June twenty ninth, nineteen hundred and six, in or from the Louisville city court, sometimes called the Louisville police court, Kentucky, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this Act further validated or legalized.



**ACT TO CODIFY, REVISE AND AMEND THE PENAL LAWS OF  
THE UNITED STATES.**

THIRTY-FIFTH STATUTES AT LARGE, PAGE 1083.

[Act of March, 4, 1909.]

The following sections repeal sections 16, 17, and 19 of the act of June 20, 1906.

SEC. 74. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

SEC. 75. Whoever shall engrave, or cause or procure to be engraved, or assist in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or whoever shall sell any such plate, or shall bring into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor or other proper officer, or whoever shall have in his control, custody or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such certificate or any part thereof, or whoever shall print, photograph, or in any manner cause to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof, or whoever shall sell any such certificate, or shall bring the same into the United States from any foreign place, except by direction of some proper officer of the United States, or whoever shall have in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent unlawfully to use the same, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

SEC. 76. Whoever, when applying to be admitted a citizen, or when appearing as a witness for any such person, shall knowingly personate any person other than himself, or shall falsely appear in the name of a deceased person, or in an assumed or fictitious name, or whoever shall falsely make, forge, or counterfeit any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens, or whoever shall utter, sell, dispose of, or shall use as true or genuine, for any unlawful purpose, any false forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or whoever shall sell or dispose of to any person other than the person for whom it was originally issued any certificate of citizenship or certificate showing any person to be admitted a citizen shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 77. Whoever shall use or attempt to use, or shall aid, assist, or participate in the use of any certificate of citizenship knowing the same to be forged, counterfeit or antedated or knowing the same to have been procured by fraud or otherwise unlawfully obtained, or whoever without lawful excuse, shall knowingly possess any false forged, antedated, or counterfeit certificate of citizenship purporting to have been issued under any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated, or counterfeit, with the intent unlawfully to use the same; or whoever shall obtain, accept, or receive any certificate of citizenship, knowing the same to have been procured by fraud or by the use or means of any false name or statement given or made with the intent to procure, or to aid in procuring, the issuance of such certificate, or knowing the same to have

been fraudulently altered or antedated; or whoever, without lawful excuse, shall have in his possession any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization with the intent unlawfully to use the same, or whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 78. Whoever shall in any manner use, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made knowing that such order, certificate, judgment or exemplification has been unlawfully issued or made, or whoever shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 79. Whoever shall knowingly use any certificate of naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud or by false evidence, or which has been or may hereafter be issued by the clerk or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority, or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not more than one thousand dollars or imprisoned not more than two years, or both.

SEC. 80. Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken shall be fined not more than one thousand dollars and imprisoned not more than five years.

SEC. 81. The provisions of the five sections last preceding shall apply to all proceedings had or taken, or attempted to be had or taken before any court in which any proceeding for naturalization may be commenced or attempted to be commenced, and whether such court was created by law with jurisdiction in naturalization proceedings or not.

NOTES. By the terms of section 341 of the act referred to above the foregoing sections specifically repealed sections 5395, 5414, 5425, 5426, 5428, and 5429 of the Revised Statutes of the United States, as well as sections 16, 17, and 19 of the act of June 29, 1906 (34 Stat. L., pt. 1, ch. 3592, p. 596).

## CITIZENSHIP.

[In regard to the acquisition of citizenship by means other than naturalization, see also acts, 1902 and 1905 of the United States Revised Statutes.]

### CITIZENSHIP BY BIRTH.

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. \* \* \* (Constitution, Art. XIV.)

### CITIZENSHIP OF CHILDREN BORN ABROAD OF CITIZENS.

[Act of February 10, 1855, amending act of April 14, 1802.]

Sec. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States. (R. S. 1878, p. 350, 1 Comp. Stat. 1901, p. 1268.)

### CITIZENSHIP OF WOMEN BY MARRIAGE.

[Act of February 10, 1855.]

Sec. 1994. Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen. (R. S. 1878, p. 350; 1 Comp. Stat. 1901, p. 1268.)

### CHILDREN OF PERSONS NATURALIZED UNDER CERTAIN LAWS TO BE CITIZENS.

[Act of April 14, 1902.]

Sec. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed. (R. S. 1878; p. 380; 1 Comp. Stat. 1901, p. 1234.)

### PORTO RICAN CITIZENSHIP.

[Act of April 12, 1900.]

Sec. 7. That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine; \* \* \*. (31 Stat. L., 79.)

### PORTO RICO: CITIZENSHIP, NATURALIZATION, AND RESIDENCE.

[Act of March 2, 1917.]

Sec. 5. That all citizens of Porto Rico, as defined by section seven of the act of April twelfth, nineteen hundred, "temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," and all natives of Porto Rico who were temporarily absent from that island on April eleventh, eighteen hundred and ninety-nine, and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States: Provided, That any person hereinbefore described may retain his present political status by making a declaration, under oath, of his decision to do so within six months of the taking effect of this act before the district court in the district in which he resides, the declaration to be in form as follows:

"I, \_\_\_\_\_, being duly sworn, hereby declare my intention not to become a citizen of the United States as provided in the act of Congress conferring United States citizenship upon citizens of Porto Rico and certain natives permanently residing in said island."

In the case of any such person who may be absent from the island during said six months the term of this proviso may be availed of by transmitting a declaration, under oath, in the form herein provided within six months of the taking effect of this act to the executive secretary of Porto Rico: And provided further, That any person who is born in Porto Rico of an alien parent and is permanently residing in that island may, if of full age, within six months of the taking effect of this act, or if a minor, upon reaching his majority or within one year thereafter, make a sworn declaration of allegiance to the United States before the United States District Court for Porto Rico, setting forth therein all the facts connected with his or her birth and residence in Porto Rico and accompanying due proof thereof, and from and after the making of such declaration shall be considered to be a citizen of the United States.

Sec. 41. That Porto Rico shall constitute a judicial district to be called "the district of Porto Rico." \* \* \* The district court for said district

shall be called "the District Court of the United States for Porto Rico,"  
 \* \* \* said district court shall have jurisdiction for the naturalization of  
 aliens and Porto Ricans, and for this purpose residence in Porto Rico shall  
 be counted in the same manner as residence elsewhere in the United States.  
 \* \* \* (39 Stat. L., 965.)

#### GRANTING CITIZENSHIP TO CERTAIN INDIANS.

[Received by the President, Oct. 25, 1919; has become a law without his approval.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every American Indian who served in the Military or Naval Establishments of the United States during the war against the Imperial German Government, and who has received or who shall hereafter receive an honorable discharge, it not now a citizen and if he so desires, shall, on proof of such discharge and after proper identification before a court of competent jurisdiction, and without other examination except as prescribed by said court, be granted full citizenship with all the privileges pertaining thereto, without in any manner impairing or otherwise affecting the property rights, individual or tribal, of any such Indian or his interest in tribal or other Indian property. (Public Laws, No. 75, 66th Cong.)

#### NATURALIZATION REGULATIONS.

[These Regulations are made under authority of sec. 28 of the act of June 29, 1906, and supersede those of Nov. 23, 1917.]

Department of Labor,  
 Office of the Secretary,  
 Washington, September 24, 1920.

1. Only clerks of courts who have been furnished with the official forms and records may file valid declarations of intention and petitions for naturalization, and such papers must be executed on the official forms.

2. Rule 2 is hereby abrogated.

3. Rule 3 is hereby abrogated.

4. Every alien must sign his petition in his own handwriting, and must be able to speak the English language unless excepted by the provisos in section 8 of the naturalization act. If an alien is physically unable to speak, that fact should be stated in his petition in lieu of the statement, "I am able to speak the English language." Aliens who arrive in the United States before reaching 18 years of age cannot obtain citizenship without making declaration of intention, which may be made in a court having naturalization jurisdiction over the place of their established residence after reaching that age.

5. Blank forms "Facts for declaration of intention" (Form 2213) and "Facts for petition for naturalization" (Form 2214 and Form 2226) are provided clerks of courts and teachers in the public schools for the preliminary use of persons desiring to make declarations of intention or petitions for naturalization. They may be taken away from the office of the clerk in order that the information called for may be obtained in full.

In all cases where aliens have arrived in this country after June 29, 1906, they should be given the form "Application for certificate of arrival," Form 2226, at the time they desire to file petitions for naturalization instead of Form 2214. This application has attached to it the facts required in a petition for naturalization. The application and other blanks on the form should all be carefully filled out by the alien and mailed to the Commissioner of Naturalization to enable him to obtain and transmit the required certificate of arrival to the clerk of court for filing with the petition. The clerk of the court should not commence the execution of the petition until he has received the certificate of arrival prescribed by this regulation.

Where the applicant is actually in the military or naval service during the time this country is engaged in the present war, or has been honorably discharged therefrom after such service, it is not necessary to obtain certificate of arrival. (See rule 24 in regard to cases of this kind.)

When a clerk of court executes a petition for naturalization for an alien who arrived in the United States before June 29, 1906, and fails to attach his

declaration of intention, or, in the case of an alien who arrived after June 29, 1906, fails to attach thereto either his certificate of arrival or his declaration of intention, in accordance with the terms of section 4 of the act of June 29, 1906, no valid petition is docketed, and since the petitioner is only required to pay for the docketing of a complete petition, the petition should be marked "spoiled" and the fee held for the payment for a complete petition. The number of the petition spoiled should be shown on the abstract of collections, with the notation "spoiled" to indicate the reason for not forwarding the fee in connection therewith. After the certificate of arrival or the declaration of intention has been received, the alien will be notified by the bureau to appear with his witnesses to file a complete petition, and the \$4 originally paid by the alien must be applied to the petition when completed and accounted for in the current abstract of naturalization fees. If the fee was transmitted to the bureau before a complete petition was filed, the clerk should so report on the face of his current abstract in order that appropriate adjustment may be made.

6. Declarations of intention will be furnished in bound volumes (Form 2202, 60 leaves; 2202A, 150 leaves; or 2202B, 250 leaves) as a court record, varied in number of pages according to the requirements of the court. In addition to the bound records, the duplicate and triplicate declarations of intention (Form 2203) will be furnished as loose sheets attached together and perforated so that they can be readily torn apart, the triplicate to be given to the declarant and the duplicate to be forwarded to the Bureau of Naturalization. Each bound record will contain an index in addition to the original declarations of intention, and will be paged in consecutive order. At the time the original declarations of intention in the bound volumes are filled out and signed the names of the declarants must be entered in the index. The declarations shall be numbered consecutively, beginning with No. 1 in volume 1 and continuing the sequence from volume to volume.

7. The original and duplicate petitions for naturalization will also be furnished in volumes and provided with an index (Form 2204, 100 leaves; or 2204B, 250 leaves), the originals paged in consecutive order and the duplicates perforated for detaching when executed. Petitions shall be numbered consecutively, beginning with No. 1 in volume 1 and continuing in order in the following volumes. The first petition in volume 2 must not be numbered "1," but shall receive the number following that given the last petition in volume 1. The number on the duplicate must correspond with the number on the original, even in cases of spoiled or mutilated petitions. Until all old form petition volumes, such as do not contain the duplicate petitions, are completed, the clerk of court using same will be furnished duplicate petitions on loose sheets (Form 2205). When signed and executed the duplicate petitions must be forwarded to the Bureau of Naturalization by registered mail, as provided in rule 22 of these Regulations. The original petitions for naturalization in the bound volumes must be filled out and signed, the names of the petitioners entered in the index, and retained as part of the permanent records of the court in which filed.

8. Certificates of naturalization (Form 2207) will be supplied in bound volumes consisting of original and duplicate certificates and stubs. Each original and duplicate certificate and the stub will be given the same serial number, the stub to the original certificate bearing a page number in addition to its serial number. The original certificate will be given to the petitioner in accordance with the final order of the court, and the duplicate shall be forwarded to the Bureau of Naturalization by registered mail, as provided in rule 22 of these Regulations, the stub to the original constituting a part of the permanent records of the court. The bound volumes containing the declarations, petitions, and certificates constitute the "records" and dockets required by sections 6 and 14 of the naturalization act. The department requires no other dockets to be kept.

9. No certificate of naturalization shall be attested or issued to a petitioner until after the judge of the court granting naturalization has signed the order to that effect.

10. Clerks of courts will be furnished with requisition blanks (Form 2201) on which are listed, by number and title, all blank forms, including record and order books, to be used in the naturalization of aliens, and these forms

must be obtained exclusively from the Bureau of Naturalization, Department of Labor, none other being official.

11. The first supply of blank forms will be furnished upon the written application of the clerks of courts having jurisdiction to naturalize aliens, accompanied, in the case of clerks of State courts, by authoritative evidence (preferably the certificate of the attorney general of the State) that the courts of which such clerks are officers have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Subsequent supplies of such blank forms will be furnished the clerks of courts having jurisdiction to naturalize aliens upon the receipt by the Bureau of Naturalization of requisitions made on Form 2201.

12. Clerks of courts when first making application to the Bureau of Naturalization for the supplies of the blank forms required in the naturalization of aliens shall state whether any declarations of intention have been filed or orders of naturalization made by their courts since September 26, 1906. They should also state the number of certificates of naturalization issued by the court since June 1, 1903, if such certificates fail to comply with the requirements of the immigration act of March 3, 1903.

13. Where the same court holds sessions at different places, whether a clerk is appointed at each of said places or the one clerk is required to transact the business of the court wherever it may sit, separate supplies shall be kept, in order to comply with the requirements of section 14 of the naturalization act, which provides that the bound declarations of intention and of petitions for naturalization shall be in chronological order.

14. In every case in which the name of a naturalized alien is changed by order of court, as provided in section 6, the clerk of court will enter on the reverse side of the original and duplicate copies of the naturalization certificate issued the alien's original name, using the following form: "Name changed by order of court from \_\_\_\_\_ (here insert original name)."<sup>22</sup>

15. On the first working day of each month the clerk shall inform the Bureau of Naturalization on Form 2209 of the date of posting notice on Form 2206, as required by section 5, and of the day, month, and year, as near as may be, for the final hearing of each and every petition for naturalization filed and posted during the preceding month. These reports on Form 2209 must specify only the petitions filed in the month to which the report relates and no others. In continued cases notice on Form 2206 must be amended to show the postponed date and remain posted until final action is had.

16. On the first working day of each month following the sitting of a court in naturalization cases the clerk of such court shall forward to the Bureau of Naturalization on Form 2210 a list containing the name of each and every alien who, during such sitting of court, has been denied naturalization and shall state the reason or reasons for such denial.

17. Applications for lost or destroyed naturalization papers issued prior to September 27, 1906, should be disposed of in accordance with the rules in force in the court at the time of the issuance of the papers.

The following rule applies exclusively to naturalization papers issued since September 26, 1906:

Applications for the issuance of declarations of intention (Form 2203) or certificates of naturalization (Form 2207) in lieu of declarations of intention or certificates of naturalization claimed to have been lost or destroyed shall be submitted in affidavit form to the clerk of the court by which any such declarations of intention or certificates of naturalization were originally issued, and shall contain full information in regard to the lost or destroyed papers, and as to the time, place, and circumstances of such alleged loss or destruction. (Form 2225 prepared for this purpose may be obtained from the clerk of any naturalization court.) The clerk shall forward to the Bureau of Naturalization the above-mentioned applications, together with such information as he may have bearing upon the merits thereof, for investigation, and no such paper so applied for shall be issued until the Bureau of Naturalization reports the results of its investigation as to the merits of the application.

In every case in which the clerk of the court issues, in accordance with the foregoing, a declaration of intention (Form 115) or a certificate of naturalization (Form 2207) upon proof of the loss or destruction of the original, he



shall make an entry on the original declaration showing the issuance of a certified copy, or on the stubs of both the new and the old certificates of naturalization, showing the issuance of a new certificate, giving the numbers of the new and old certificates and on the margin of the new duplicate certificate a notation should be inserted showing the number of the old certificate, as follows: "Issued in lieu of Certificate No. \_\_\_\_\_."

One certified copy of declaration of intention (Form 2215) or certificate of naturalization (Form 2216) may be furnished by the clerk of the issuing court under his hand and the seal of the court for the use only of the person concerned to establish his citizenship status in connection with any entry under the public-land laws of the United States. Unless the applicant presents to the clerk his original declaration or certificate for comparison, these forms can under no conditions be issued. In case the alien makes a second land entry he may support his second entry by describing the first land claim with which his declaration or certificate is filed.

The fees to be collected for the issuance of each of the copies of declarations of intention and of certificates of naturalization described in this regulation, and the disposal to be made of such fees when collected, will be determined in accordance with the law and the rules in force in the respective courts. No part of these fees is required to be forwarded to this department.

18. Original declarations of intention, or certificates of naturalization, issued subsequent to September 26, 1906, and surrendered to the General Land Office in support of entries upon public land, may be returned upon proper application to the Commissioner, General Land Office, Washington, D. C. A description of the land should be included, giving the section, township, and range, together with the date and place of making the entry. The originals will then be returned by the General Land Office.

19. For recording the affidavits of substituted witnesses under section 5 of the act of June 29, 1906, blank forms (Form 2218) have been prepared as pasters to be affixed to the backs of petitions in the bound volume, following the "Order of court admitting petitioner." Copies of this form may be procured by the usual requisition (Form 2201). Do not send copies of this form to the Bureau of Naturalization. Form 2218 need not be used where space has been provided on the reverse of the original petition in the bound volume for recording particulars regarding substitute witnesses.

20. Aliens making declarations of intention, or filing petitions for naturalization, must sign their names in full and without abbreviation in the appropriate places on the various blank forms, and the entries of their names by the clerk must correspond in every particular. Where a name contains an initial which is used only to distinguish one individual from another with the same surname, that fact should be noted on the paper.

21. Clerks of courts shall not receive declarations of intention (Form 2202) or file petitions for naturalization (Form 2204) from other aliens than white persons and persons of African nativity or of African descent, with the exception of Filipinos (referred to in the first clause of the seventh subdivision of section 4, of the act of June 29, 1906, as amended by the act of May 9, 1918, which permits the naturalization of Filipinos under certain conditions). Any alien, other than a Chinese person, who claims that he is a white person in the sense in which that term is used in section 2169, Revised Statutes, should be allowed, if he insists upon it after an explanation is made showing him the risk of denial, to file his declaration or his petition, as the case may be, leaving the issue to be determined by the court.

Declarations should not be received from, nor petitions for naturalization filed by, persons not residing in the judicial district within which the court is held.

22. On the first working day of each and every month clerks of courts, unless otherwise instructed by the bureau or by the chief naturalization examiner, shall forward to the Bureau of Naturalization, under Government frank, duplicates of all declarations of intention, petitions for naturalization, and certificates of naturalization filed or issued during the preceding month; except that at any time during the month that an aggregate number of 200 naturalization papers of all classes have been filed or issued the duplicates thereof shall be forwarded to the bureau forthwith. Duplicate petitions for naturalization and duplicate certificates of naturalization shall be forwarded by registered mail, without the payment of registry fee (act of Congress,

Pub. No. 64, sec. 2, approved Oct. 6, 1917); and duplicate declarations of intention may be inclosed therewith or forwarded by ordinary mail. Each clerk making a shipment of naturalization papers shall forward therewith a report on Form 2208 showing the number of such papers filed or issued during the month or portion of month reported. Where petitions for naturalization have been filed, report on Form 2209, showing the approximate dates of hearings, shall also be inclosed with such shipment. When no naturalization business has been transacted during any month it is unnecessary to render a report to that effect other than the quarterly report on Form 2212. (See Form 2208.)

23. All fees provided for in section 13 of the act of June 29, 1906, shall be accounted for on the "Abstract of collections" (Form 2212) within 30 days after the close of each quarter of a fiscal year. These quarters end September 30, December 31, March 31, and June 30, respectively. One-half of all moneys so collected, up to \$6,000, and all in excess thereof, shall be remitted to the Commissioner of Naturalization, Bureau of Naturalization, with said quarterly account, such remittance to be made payable to the order of the Secretary of Labor, preferably by draft. If collections for the first quarter of a fiscal year are \$1,500 or over the clerk of court must not retain more than \$750. If collections for the first and second quarters total \$3,000 or over, the clerk must not retain more than a total of \$1,500 for the two quarters. If collections for the first, second, and third quarters total \$4,500 or over, the clerk must not retain more than a total of \$2,250 for the three quarters, and not more than a total of \$3,000 for the entire fiscal year where the total collections for the year are \$6,000 or over.

The Comptroller of the Treasury has decided that section 13 requires the collection of the final fee of \$2, or a total of \$4, at the time the petition for naturalization is filed whether the certificate of naturalization be issued or denied.

In cases where no naturalization business is transacted during any quarter, Form 2212 shall be forwarded as aforesaid with the words "No transactions" noted thereon.

24. (a) Where a petition for naturalization is filed under the seventh subdivision of section 4 by an honorably discharged soldier, sailor, or marine, insert after the information regarding declaration of intention: "I am an honorably discharged soldier, sailor, or marine" and apply for citizenship under the seventh subdivision of section 4 of the act of June 29, 1906, as amended. I enlisted in the (name of organization) on the (day, month, and year). That portion of the last paragraph preceding the signature of the petitioner relating to the certificate of arrival should be struck through when the alien arrived on or prior to June 29, 1906. When the arrival was after that date, none of the words should be struck through. The statement following the signature of the petitioner to the body of the petition relating to the certificate of arrival should be struck through in cases of aliens arriving on or before June 29, 1906, but for those arriving after that date none of the words should be struck through, and in both cases the entry should also be made "Honorable discharge certificate of petitioner was exhibited to me this — day of —." An appropriate note should also be entered upon the stub of the certificate issued to said applicant. (Sec. 2166, Revised Statutes, was expressly repealed by sec. 2 of the act approved May 9, 1918, except as to those aliens who, prior to Jan. 1, 1900, served in the Armies of the United States and were honorably discharged therefrom.)

(b) No petition may be legally filed under the seventh subdivision of section 4 of the act of June 29, 1906, as amended by the act of May 9, 1918, until the applicant has first passed the preliminary examination by a representative of the Bureau of Naturalization. The entries to be made at the hearing to be taken by the clerk of the court in a petition for naturalization under this subdivision will be explained by the representative of the Bureau.

(c) Petitions for naturalization under the sixth subdivision of section 4 may be legally filed by children of a deceased declarant only after such children who were minors at the time of the death of the father have attained their majority, and provided the declaration of intention filed by the father is not less than two nor more than seven years old. Where a petition is filed by a child under the foregoing conditions, the fifth assertion should be altered

to read: "My father declared his intention to become a citizen of the United States on the \_\_\_\_ day of \_\_\_\_, A. D. \_\_\_\_, and died on the \_\_\_\_ day of \_\_\_\_, A. D. \_\_\_\_."

(d) Where a petition for naturalization is filed under the sixth subdivision of section 4 by the widow of a deceased declarant, the fifth assertion should be altered to correspond to the foregoing in relation to the child, with the exception that the word "husband" should be inserted instead of the word "father."

(e) In the last two cases referred to the words in the paragraph immediately preceding petitioner's first signature should be altered to show that the father's or husband's declaration (as the case may be), or a certified copy thereof, is attached to the original petition, and the statement of the clerk of the court immediately below the first signature of the petitioner should be changed to show the facts. If the petitioner arrived in the United States prior to June 29, 1906, the words in statement immediately preceding the first signature of petitioner and thereafter having reference to the certificate of arrival should also be struck through. If the petitioner arrived in the United States after June 29, 1906, certificate of arrival must be obtained in accordance with Rule 5 of these regulations, and the words in the two statements above referred to should remain unaltered.

(f) Where a petition for naturalization is filed by the widow of an alien, based upon her own declaration of intention, the date of her husband's demise should be shown in the fifth assertion.

(g) Naturalization papers may be legally filed by any unmarried woman who is otherwise qualified, or the widow of a foreign-born person not naturalized, but not by a woman during the existence of the marital relation. Notation of the facts in each case should be made upon the face of each paper before it is issued.

(h) Certain aliens not subjects of enemy countries are permitted to petition for naturalization under the terms of the tenth subdivision of section 4 of the act of June 29, 1906, as amended by the act of June 25, 1910 (now repealed), and amended by the act of May 9, 1918, without proof of previous declarations of intention. Clerks of courts should state in lieu of the information regarding the declaration of intention, "Filed under subdivision 10th, section 4, act of June 29, 1906, amended by act of May 9, 1918," and the statement following the first signature of the petitioner should be changed so as to read, "Declaration of intention omitted under the terms of subdivision 10th, section 4, act of June 29, 1906, as amended by act of May 9, 1918." Affidavit setting forth particulars as to the reason for the exemption claimed must be signed and sworn to by the petitioner in triplicate before the clerk of the court or his authorized deputy. The affidavit form to be used will be furnished by the Bureau as the individual cases arise, and not upon general requisition. The prescribed affidavit form (not an affidavit drawn up on the typewriter or otherwise) should be used in all such cases. In the event the form is not presented by an officer in the Naturalization Service, it will be forwarded to the clerk of the court for use in any case to which it relates, after examination of the duplicate petition in the Bureau. (Subjects of enemy countries who were entitled to petition for naturalization under the act of June 25, 1910, repealed, which permitted the filing of petitions under certain conditions without the filing of declarations of intention had such right preserved to them by the eleventh subdivision of section 4 of the act of June 29, 1906, as amended by the act of May 9, 1918. When filing petitions in such cases clerks of courts should make the same entries as shown above, with the exception that "11th" should be entered after the word "subdivision" in both statements.)

(i) Where a petition is filed under the eleventh subdivision of section 4, and is based on service in the United States Army, Navy, Marine Corps, or Naval Auxiliary Service, the dates of enlistment and discharge should be shown, and the clerk of court should certify immediately above the statement that declaration of intention has been attached to the petition, "Honorable discharge certificate exhibited to me this date. (Where the petition is based on the provisions of the act of June 25, 1910, now repealed, the assertion in the petition having reference to the declaration of intention should be struck through, and in lieu thereof statement should be inserted that the

petition is "Filed under the provisions of subdivision 11th, section 4, of the act of June 29, 1906, as amended by act of May 9, 1918," and the statement following the first signature of the petitioner in the petition should be changed so as to read, "Declaration of intention omitted under subdivision 11th, section 4, of the act of June 29, 1906, as amended by act of May 9, 1918.")

(k) The following oath of allegiance has been adopted for all who come within the provisions of subdivision twelfth of section 4: "I hereby declare on oath, that I absolutely and entirely renounce and adjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty. that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same." Anyone who is deemed to have expatriated himself and to whom the provisions of subdivision twelfth are applicable should appear before the appropriate court, or if abroad, American consular representative, and take this oath of allegiance. If taken abroad, the Form 131 should be executed in duplicate and forwarded to the Department of State by the consular officer. If taken in the United States, Form 136 should be executed in triplicate, and two copies forwarded to the Bureau of Naturalization, one being retained, as a part of the court records, by the clerk of court. Where the oath is taken abroad it is desirable that an American passport should be issued to the person taking such oath to enable him to reenter the United States, and thus avoid any difficulties at the port of entry into this country.

Note.—Section 2 of the act of March 2, 1907, provides that any American citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to any foreign state. The last proviso of that section is as follows: "And provided also, That no American shall be allowed to expatriate himself when this country is at war." In view of the foregoing, the oath of allegiance will not be required of American citizens who have subscribed to an oath of allegiance after April 5, 1917, for the purpose of entering the military or naval service of any country associated with the United States in the World War, since by this last proviso they are not allowed to expatriate themselves except during time of peace. An American citizen who took an oath or obligation prior to April 6, 1917, to enable him to serve in the military or naval forces of a country which was at war with a country with which the United States was at war, and thereby expatriated himself, may have his American citizenship restored by complying with the terms of subdivision twelfth.

(l) Where a petition is filed under the thirteenth subdivision of section 4 the alien must produce a declaration of intention at least two and not more than seven years old; he must obtain certificate of arrival if he came to the United States after June 29, 1906; and he must have his petition posted for at least 90 days before the final hearing thereof. The words having reference to the declaration of intention in the petition should be struck through, and in lieu thereof the following should be inserted: "I am an honorably discharged member of (name of organization) and apply for citizenship under subdivision 13th of section 4 of the act of June 29, 1906, as amended by act of May 9, 1918. I entered the (state branch of the service) on the (day, month, and year) and was discharged (day, month, and year)." The clerk of the court should certify immediately below the statement having reference to the

attaching of the declaration "Honorable discharge certificate exhibited to me this \_\_\_\_\_ day of \_\_\_\_\_"

25. So far as practicable the clerks of courts having jurisdiction under the provisions of the naturalization laws will be furnished, upon request on therefor on Form 2201, with appropriately addressed envelopes for communicating with the bureau. When not using such envelopes, however, all communications, in addition to the other necessary address, should be plainly marked "Bureau of Naturalization."

26. Clerks of courts having jurisdiction to naturalize under the provisions of the act of June 29, 1906, are requested, in case the foregoing rules and regulations fail to remove from their minds doubt as to the proper course of action in any case, to write to the Commissioner of Naturalization, Bureau of Naturalization, for instructions before taking such action.

(Signed) LOUIS F. POST,  
Acting Secretary.

## THE ELECTIVE FRANCHISE.

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### **Interference with freedom of elections by officers of Army or Navy.**

No officer of the army or navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

U. S. R. S., § 2003.

### **Race, color, or previous condition not to affect the right to vote.**

All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

U. S. R. S., § 2004.



## CRIMES AGAINST THE ELECTIVE FRANCHISE AND CIVIL RIGHTS OF CITIZENS.

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### **Intimidating voters by bribery or threats.**

Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising the right of suffrage, to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts or labor, or by threats or violence to himself or family, shall be punished as provided in the preceding chapter

U. S. R. S., § 5507.

### **Conspiracy to injure or intimidate citizens in the exercise of civil rights.**

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his so having exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisonment not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

U. S. R. S., § 5508.

### **Other crimes committed while violating the preceding sections.**

If in the act of violating any provision in either of the two preceding sections any other felony or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed.

U. S. R. S., § 5509.

### **Depriving citizens of civil rights under color of State laws.**

Every person who, under color of any law, statute, ordinance, regulation, or custom, subjects, or causes to be subjected, any inhabitant of any State or Territory to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both.

U. S. R. S., § 5510.

**Conspiracy to prevent accepting or holding office under United States, etc.**

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence, under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of official duties, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine or imprisonment.

U. S. R. S., § 5518.

**Unlawful presence of troops at elections.**

Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control, any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States or to keep the peace at the polls, shall be fined not more than five thousand dollars, and suffer imprisonment at hard labor not less than three months nor more than five years.

U. S. R. S., § 5528.

**Intimidation of voters by officers, etc., of Army or Navy.**

Every officer or other persons in the military or naval service who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State, shall be fined not more than five thousand dollars, and imprisoned at hard labor not more than five years.

U. S. R. S., § 5529.

**Officers of Army or Navy prescribing qualifications of voters.**

Every officer of the Army or Navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State, shall be punished as provided in the preceding section.

U. S. R. S., § 5530.

**Officers, etc., of Army or Navy interfering with officer of election, etc.**

Every officer or other person in the military or naval service who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in the State different from those prescribed by law, or who interferes in any manner with any officer of any election in the discharge of his duty, shall be punished as provided in section fifty-five hundred and twenty-nine.

U. S. R. S., § 5531.

**Disqualification for holding office.**

Every person convicted of any of the offenses specified in the five preceding sections, shall, in addition to the punishments therein severally prescribed, be States: but nothing in those sections shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any

election district to which he may belong, if otherwise qualified according to the laws of the state in which he offers to vote.

U. S. R. S., § 5632.

#### **Political contributions by corporations.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any national bank or any corporation organized by authority of any laws of Congress to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-presidential electors or a Representative in Congress is to be voted for or any election by any state legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be subject to a fine not exceeding five thousand dollars, and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall upon conviction be punished by a fine not exceeding one thousand dollars and not less than two hundred and fifty dollars, or by imprisonment for a term of not more than one year, or both such fine and imprisonment in the discretion of the court.

Act January 26, 1907, ch. 420, 34 Stat. L. 864.

#### **Publicity of campaign contributions for nomination and election to the offices of representative and senator in the congress of the United States and limiting the amount of campaign expenses.**—(H. R. Bill No. 2230, approved June 25, 1910, as amended by act approved August 19, 1911 and by act approved August 23, 1912.)

Be it enacted etc. that the term "political committee" under the provisions of this act shall include the national committees of all political parties and the national congressional campaign committees of all political parties and all committees, associations or organizations which shall in two or more states influence the result or attempt to influence the result of an election at which Representatives in Congress are to be elected.

Sec. 2. That every political committee as defined in this act shall have a chairman and a treasurer. It shall be the duty of the treasurer to keep a detailed and exact account of all money or its equivalent received by or promised to such committee or any member thereof, or by or to any person acting under its authority or in its behalf, and the name of every person, firm, association or committee from whom received, and of all expenditures, disbursements, and promises of payment or disbursements made by the committee or any member thereof or by any person acting under its authority or in its behalf, and to whom paid, distributed, or disbursed. No officer or member of such committee, or other person acting under its authority or in its behalf, shall receive any money or its equivalent, or expend or promise to expend any money on behalf of such committee, until after a chairman and treasurer of such committee shall have been chosen.

Sec. 3. That every payment or disbursement made by a political committee exceeding \$10.00 in amount be evidence by a receipted bill stating the particulars of expense, and every such record, voucher, receipt, or account shall be preserved for fifteen months after the election to which it relates.

Sec. 4. That whoever acting under the authority or in behalf of such political committee, whether as a member thereof or otherwise, receives any contribution, payment, loan, gift, advance, deposit, or promise of money of its equivalent shall, on demand, and in any event within five days after the receipt of such contribution, payment, loan, gift, advance deposit or promise

render to the treasurer of such political committee a detailed account of the same, together with the name and address from whom received, and said treasurer shall forthwith enter the same in a ledger or record to be kept by him for that purpose.

Sec. 5. That the treasurer of every such political committee shall, not more than fifteen days and not less than ten days next before an election at which Representatives in Congress are to be elected in two or more states, file in the office of the Clerk of the House of Representatives at Washington, District of Columbia, with said clerk, an itemized detailed statement; and on each sixth day thereafter until such election said treasurer shall file with said clerk a supplemental itemized detailed statement. Each of said statements shall conform to the requirements of the following section of this act, except that the supplemental statement herein required need not contain any item of which publicity is given in a previous statement. Each of said statements shall be full and complete, and shall be signed and sworn to by said treasurer.

It shall also be the duty of said treasurer to file a similar statement with said clerk within thirty days after such election, such final statement also to be signed and sworn to by said treasurer and to conform to the requirements of the following section of this act. The statements so filed with the clerk of the House shall be preserved by him for fifteen months and shall be a part of the public records of his office and shall be open to public inspection.

Sec. 6. That the statements required by the preceding section of this act shall state:

First. The name and address of each person, firm, association, or committee who or which has contributed, promised, loaned, or advanced to such political committee, or any officer, member, or agent thereof, either in one or more items, money or its equivalent of the aggregate amount or value of one hundred dollars or more, and the amount or sum contributed, promised, loaned, or advanced by each.

Second. The aggregate sum contributed, promised, loaned, or advanced to such political committee, or to any officer, member, or agent thereof, in amounts of less than one hundred dollars.

Third. The total sum of all contributions, promises, loans, and advances received by such political committee or any officer, member, or agent thereof.

Fourth. The name and address of each person, firm, association, or committee to whom such political committee, or any officer, member, or agent thereof, has distributed, disbursed, contributed, loaned, advanced, or promised any sum of money or its equivalent of the amount or value of ten dollars or more, stating the amount or sum distributed, disbursed, contributed, loaned, advanced, or promised to each, and the purpose thereof.

Fifth. The aggregate sum distributed, disbursed, contributed, loaned, advanced, or promised by such political committee, or any officer, member, or agent thereof, where the amount or value of such distribution, disbursement, loan, advance, or promise to any one person, firm, association, or committee in one or more items is less than ten dollars.

Sixth. The total sum disbursed, distributed, contributed, loaned, advanced, or promised by such political committee, or any officer, member, or agent thereof.

(As amended by act approved August 19, 1911.)

Sec. 7. That every person, firm, association, or committee, except political committees as hereinbefore defined, that shall expend or promise any sum of money or other thing of value amounting to \$50 or more, for the purpose of influencing or controlling, in two or more states, the result of an election at which representatives to the congress of the United

States are elected, unless he or it shall contribute the same to a political committee as heretofore defined, shall file the statements of the same under oath, as required by section 6 of this act, in the office of the clerk of the house of representatives, at Washington, D. C., which statements shall be held by said clerk in all respects as required by section 5 of this act.

Sec. 8. The word "candidate" as used in this section shall include all persons whose names are presented for nomination for representative or senator in the congress of the United States at any primary election or nominating convention, or for indorsement or election at any general or special election held in connection with the nomination or election of a person to fill such office, whether or not such persons are actually nominated, indorsed, or elected.

Every person who shall be a candidate for nomination at any primary election or nominating convention, or for election at any general or special election, as representative in the congress of the United States, shall, not less than ten nor more than fifteen days before the day for holding such primary election or nominating convention, and not less than ten nor more than fifteen days before the day of the general or special election at which candidates for representatives are to be elected, file with the clerk of the house of representatives at Washington, District of Columbia, a full, correct, and itemized statement of all moneys and things of value received by him or by anyone for him with his knowledge and consent, from any source, in aid or support of his candidacy, together with the names of all those who have furnished the same in whole or in part, and such statement shall contain a true and itemized account of all moneys and things of value given, contributed, expended, used, or promised by such candidate, or by his agent, representative, or other person for and in his behalf with his knowledge and consent, together with the names of all those to whom any and all such gifts, contributions, payments, or promises were made, for the purpose of procuring his nomination or election.

Every person who shall be a candidate for nomination at any primary election or nominating convention, or for indorsement at any general or special election, or election by the legislature of any state, as senator in the congress of the United States, shall, not less than ten nor more than fifteen days before the day for holding such primary election or nominating convention, and not less than ten nor more than fifteen days before the day of the general or special election at which he is seeking indorsement, and not less than five nor more than ten days before the day upon which the first vote is to be taken in the two houses of the legislature before which he is a candidate for election as senator, file with the secretary of the senate at Washington, District of Columbia, a full, correct, and itemized statement of all moneys and things of value received by him or by anyone for him with his knowledge and consent, from any source, in aid or support of his candidacy, together with the names of all those who have furnished the same in whole or in part; and such statement shall contain a true and itemized account of all moneys and things of value given, contributed, expended, used, or promised by such candidate, or by his agent, representative, or other person for and in his behalf with his knowledge and consent, together with the names of all those to whom any and all such gifts, contributions, payments, or promises were made for the purpose of procuring his nomination or election.

Every such candidate for nomination at any primary election or nominating convention, or for indorsement or election at any general or spe-

cial election, or for election by the legislature of any state, shall, within fifteen days after such primary election or nominating convention, and within thirty days after any such general or special election, and within thirty days after the day upon which the legislature shall have elected a senator, file with the clerk of the house of representatives or with the secretary of the senate, as the case may be, a full, correct, and itemized statement of all moneys and things of value received by him or by anyone for him with his knowledge and consent, from any source, in aid or support of his candidacy, together with the names of all those who have furnished the same in whole or in part; and such statement shall contain a true and itemized account of all moneys and things of value given, contributed, expended, used, or promised by such candidate, or by his agent, representative, or other person for and in his behalf with his knowledge and consent, up to, on, and after the day of such primary election, nominating convention, general or special election or election by the legislature, together with the names of all those to whom any and all such gifts, contributions, payments, or promises were made for the purpose of procuring his nomination, indorsement, or election.

Every such candidate shall include therein a statement of every promise or pledge made by him, or by any one for him with his knowledge and consent or to whom he has given authority to make any such promise or pledge, before the completion of any such primary election or nominating convention or general or special election or election by the legislature, relative to the appointment or recommendation for appointment of any person to any position of trust, honor, or profit, either in the county, state, or nation, or in any political subdivision thereof, or in any private or corporate employment, for the purpose of procuring the support of such person or of any person in his candidacy, and if any such promise or pledge shall have been made the name or names, the address or addresses, and the occupation or occupations, of the person or persons to whom such promise or pledge shall have been made, shall be stated, together with a description of the position relating to which such promise or pledge has been made. In the event that no such promise or pledge has been made by such candidate, that fact shall be distinctly stated.

No candidate for representative in congress or for senator of the United States shall promise any office or position to any person, or to use his influence or to give his support to any person for any office or position for the purpose of procuring the support of such person, or of any person, in his candidacy; nor shall any candidate for senator of the United States give, contribute, expend, use, or promise any money or thing of value to assist in procuring the nomination or election of any particular candidate for the legislature of the state in which he resides, but such candidate may, within the limitations and restrictions and subject to the requirements of this act, contribute to political committees having charge of the disbursement of campaign funds.

No candidate for representative in congress or for senator of the United States shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised, in procuring his nomination and election, any sum, in the aggregate, in excess of the amount which he may lawfully give, contribute, expend, or promise under the laws of the state in which he resides: Provided, That no candidate for representative in congress shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding five thousand dollars in



any campaign for his nomination and election; and no candidate for senator of the United States shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding ten thousand dollars in any campaign for his nomination and election: Provided further, That money expended by any such candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the state in which he resides, or for his necessary personal expenses, incurred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for telegraph and telephone service, shall not be regarded as an expenditure within the meaning of this section, and shall not be considered any part of the sum herein fixed as the limit of expense and need not be shown in the statements herein required to be filed.

The statements herein required to be made and filed before the general election, or the election by the legislature at which such candidate seeks election, need not contain items of which publicity is given in a previous statement, but the statement required to be made and filed after said general election or election by the legislature shall, in addition to an itemized statement of all expenses not theretofore given publicity, contain a summary of all preceding statements.

Any person, not then a candidate for senator of the United States, who shall have given, contributed, expended, used, or promised any money or thing of value to aid or assist in the nomination or election of any particular member of the legislature of the state in which he resides, shall, if he thereafter becomes a candidate for such office, or if he shall thereafter be elected to such office without becoming a candidate therefor, comply with all of the provisions of this section relating to candidates for such office, so far as the same may be applicable; and the statement herein required to be made, verified, and filed after such election shall contain a full, true, and itemized account of each and every gift, contribution, expenditure, and promise whenever made, in any wise relating to the nomination or election of members of the legislature of said state, or in any wise connected with or pertaining to his nomination and election of which publicity is not given in a previous statement.

Every statement herein required shall be verified by the oath or affirmation of the candidate, taken before an officer authorized to administer oaths; and the depositing of any such statement in a regular post office, directed to the Clerk of the House of Representatives, or to the Secretary of the Senate, as the case may be, duly stamped and registered, within the time required herein, shall be deemed a sufficient filing of any such statement under any of the provisions of this Act.

(As amended by act approved August 23, 1912.)

This act shall not be construed to annul or vitiate the laws of any state, not directly in conflict herewith, relating to the nomination or election of candidates for the offices herein named, or to exempt any such candidate from complying with such state laws.

(As amended by act approved August 19, 1911.)

Sec. 8. That any person may in connection with such election incur and pay from his own private funds for the purpose of influencing or controlling, in two or more states, the results of an election at which representatives to the congress of the United States are elected, all necessary personal expenses for his traveling, for stationery, and postage, and for telegraph and telephone service without being subject to the provisions of this act.

(Formerly section 8. Amended and renumbered by act approved August 19, 1911.)

Sec. 10. That nothing contained in this act shall limit or affect the right of any person to spend money for proper legal expenses in maintaining or contesting the results of any election.

(Formerly section 9. Renumbered by act approved August 19, 1911.)

Sec. 11. That every person willfully violating any of the foregoing provisions of this act shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Formerly section 10. Renumbered by act approved August 19, 1911.)



## **PART 4.**

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### **POLITICAL DIVISIONS OF STATE, COUNTIES AND TOWNS.**



# CONGRESSIONAL DISTRICTS

## AN ACT DIVIDING THE STATE INTO CONGRESSIONAL DISTRICTS

(Laws of 1911, Chapter 890, as Amended by L. 1917, chs. 797, 799;  
L. 1918, ch. 34.)

### Section 1. Districts.

For the election of representatives in congress of the United States, this state shall be and is hereby divided into forty-three districts, namely:

First District. The county of Suffolk, the county of Nassau, the twenty-second and twenty-third election districts of the second assembly district of the county of Queens, the twenty-first, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth and thirty-fifth election districts of the fourth assembly district of the county of Queens, as now constituted shall compose the first district. The boundaries of the said first district are as follows: Suffolk county, Nassau county, and that portion of Queens county bounded as follows: Beginning at the boundary line of Nassau county and Queens county at Central avenue, and running along Central avenue in a westerly direction to Farmers avenue, thence in a northerly direction along Farmers avenue to the junction of the Long Island railroad and Old Country road, running along Old Country road to Fulton street, thence westerly along Fulton street to Bergen avenue, thence northerly along Bergen avenue to Hillside avenue, easterly on Hillside avenue to Grand avenue, thence northerly on Grand avenue to the boundary line between the third and fourth wards, thence westerly along the boundary line between the third and fourth wards to Flushing creek, the boundary line between the second and third wards, thence northerly along said Flushing creek to Strong's causeway, and thence easterly along Strong's causeway and the boundary line between the second assembly district and the fourth assembly district of the county of Queens, said line being through Ireland Mill road to Lawrence avenue, through Lawrence avenue to Bradford avenue, through Bradford avenue to Main street, to Lincoln street, to Union avenue, through Union avenue to Whitestone road, through Whitestone road to Eighteenth street, through Eighteenth street to the Boulevard, through the Boulevard to Long Island sound, along Long Island Sound and Little Neck bay to the boundary line between the county of Queens and the county of Nassau and along said boundary line between the county of Queens and the county of Nassau to Central avenue, the point or place of beginning.

\* Second district. The first assembly district of the county of Queens, the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth election districts of the second assembly district of the county of Queens; the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first and forty-second election districts of the third assembly district of the county of Queens and the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-second, twenty-third and twenty-fourth election districts of the fourth assembly district of the county of Queens, shall compose the second district. The boundaries of the said second district are as follows: Beginning at Central avenue on the boundary line between the county of Queens and the county of Nassau and running along said boundary line in a southerly direction to the Atlantic ocean, thence along said Atlantic ocean to Rockaway inlet and the boundary line between the county of Kings and the county of Queens, thence along said boundary line between said counties in a northeasterly and northerly

\* For modification of the second district as here established see L. 1915, ch. 410, post, p. 371.



direction to Atlantic avenue, thence easterly along Atlantic avenue to Morris avenue, thence southerly along Morris avenue to Rockaway road, thence southeasterly along Rockaway road to Bergen Landing road, thence northeasterly along Bergen Landing road to Van Wyck avenue; along Van Wyck avenue northerly to Newtown road, thence northwesterly along Newtown road to the boundary line between the second and third wards of the borough of Queens, thence westerly along said boundary line and the boundary line between the county of Kings and the county of Queens, thence northwesterly along said boundary line to Newtown creek, thence northwesterly along Newtown creek to the East river, thence along said East river and Long Island sound through Powell's cove to the point where the boulevard intersects Powell's cove, thence in a southerly direction along the boulevard to Eighteenth street, thence easterly along eighteenth street to Whitestone avenue, then in a southwesterly direction along Whitestone avenue to Union avenue and along Union avenue to Lincoln street, thence along Lincoln street to Main street, thence along Main street to Bradford avenue, thence along Bradford avenue to Lawrence avenue, thence along Lawrence avenue in a southwesterly direction along the boundary line between the second and third wards of the borough of Queens, the same being the Ireland Mill road to Strong's causeway, thence along Strong's causeway to Flushing creek, thence along said Flushing creek and said boundary line between the second and third wards, in a southerly direction to the boundary between the third and fourth wards of said borough of Queens, thence easterly along the said boundary line between the third and fourth wards of the borough of Queens to Grand avenue, thence southerly along Grand avenue to Hillside avenue, thence westerly along Hillside avenue to Bergen avenue, thence southerly along Bergen avenue to Fulton street, thence easterly along Fulton street to Old Country road, thence southeasterly along Old Country road to Farmers avenue, thence southerly along Farmers avenue to Central avenue, thence southeasterly along Central avenue to the point or place of beginning in the boundary line between the county of Queens and the county of Nassau.

Third district. The third congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of East river and North Eleventh street, thence along North Eleventh street to Berry street, to North Twelfth street, to Union avenue, to Frost street, to Lorimer street, to Broadway, to Walton street, to Throop avenue, to Lorimer street, to Harrison avenue, to Flushing avenue, to Broadway, to DeKalb avenue, to Hamburg avenue, to Stanhope street, to the boundary line of Kings and Queens counties, thence along said boundary line to Newtown creek, thence northerly, westerly and southerly through the waters of Newtown creek to East river; through the waters of the East river to the point of beginning.

Fourth district. The fourth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of New York bay and Sixty-third street, thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue or parkway, to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's avenue or place, to Fourth avenue, to Bergen street, to Boerum place, to Dean street, to Court street, to Amity street, to Clinton street, to Warren street, to Columbia street, to Congress street, to the waters of the East river; thence southerly through the waters of the East river to the waters of New York bay; thence through the waters of New York bay to the point of beginning.

Fifth district. The fifth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of Bergen street and Nevins street, thence along Nevins street to Atlantic avenue, to Rond street, to Fulton street, to Hudson avenue, to DeKalb avenue, to Washington park or Cumberland street, to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Lafayette avenue, to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue or Washington avenue, to Malbone street, to Ocean avenue, to Parkside avenue, to Parade place, to Caton avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C

or Avenue C west, to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-first street, to Thirteenth avenue, to Fortieth street, to Twelfth avenue, to Thirty-ninth street, to Fort Hamilton avenue or parkway, to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's avenue or place, to Fourth avenue, to Bergen street, to the point of beginning.

Sixth district. The sixth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of Nostrand avenue and Lafayette avenue, thence along Lafayette avenue to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue, or Washington avenue, to Malbone street, to Ocean avenue, to Parkside avenue, to Parade place, to Coney Island avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C or Avenue C west, to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue, to Fiftieth street, to Sixteenth avenue, to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue, or Parkville avenue, to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road, to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thattford avenue, to Livonia avenue, to Osborne street, to Dumont avenue, to Thattford avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Sumner avenue, to McDonough street, to Lewis avenue, to Greene avenue, to Nostrand avenue, to the point of beginning.

Seventh district. The seventh congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of the waters of Buttermilk channel, East river, and Congress street, thence along Congress street to Columbia street, to Warren street, to Clinton street, to Amity street, to Court street, to Dean street, to Boerum place, to Bergen street, to Nevins street, to Atlantic avenue, to Bond street, to Fulton street, to Hudson avenue, to DeKalb avenue, to Washington park or Cumberland street, to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Flushing avenue, to Harrison avenue, to Lorimer street, to Throop avenue, to Walton street, to Broadway, to Lorimer street, to Frost street, to Union avenue, to North Twelfth street, to Berry street, to North Eleventh street, to the waters of East river; thence through the waters of East river and the waters of Buttermilk channel, to the point of beginning.

Eighth district. The Eighth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of Sutter avenue and Williams avenue, thence along Williams avenue to Blake avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line of Kings and Queens counties, thence southerly and westerly along said boundary line, south of Barren island, to the Atlantic ocean, thence westerly and northerly through the waters of the Atlantic ocean, Gravesend bay, the Narrows and New York bay, to Sixty-third street; thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue or parkway, to Thirty-ninth street, to Twelfth avenue, to Fortieth street, to Thirtieth avenue, to Forty-first street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue, to Fiftieth street to Sixteenth avenue, to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue or Parkville avenue, to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road,

to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thatford avenue, to Livonia avenue, to Osborn street, to Dumont avenue, to Thatford avenue, to Sutter avenue, to the point of beginning.

Ninth district. The ninth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of the boundary line of Kings and Queens counties and Stanhope street, thence along Stanhope street to Hamburg avenue to DeKalb avenue, to Broadway, to Hopkinson avenue, to McDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Blake avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line of Kings and Queens counties, thence northerly and westerly along said boundary line of said counties, to the point where said line is intersected by the center line of Atlantic avenue; thence along Atlantic avenue, in the county of Queens, to Morris avenue, to Rockaway plank road, to Bergen landing road, to Van Wyck avenue, to Newtown road, to the boundary line of the second and fourth wards in the said county, to the boundary line of Kings and Queens counties; thence westerly and northerly along said line to the point of beginning.

Tenth district. The tenth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of Nostrand avenue and Flushing avenue, thence along Flushing avenue to Broadway, to Hopkinson avenue, to McDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Summer avenue, to McDonough street, to Lewis avenue, to Greene avenue, to Nostrand avenue, to the point of beginning.

Eleventh district. Richmond county, Governor's island, Bedloe's island, Ellis island and that portion of the first assembly district of the county of New York bounded on the northwest by Clarkson street, along Clarkson street to Carmine street, along Carmine street to Sixth avenue, along Sixth avenue to West Third street, along West Third street to Sullivan street, along Sullivan street to Canal street, along Canal street to Broadway, along Broadway to Worth street, along Worth street to Park row, along Park row to North William street, along North William street and William street to Beaver street, along Beaver street to Broadway, along Broadway and Whitehall street to the East river and along the East river and the Hudson or North river to Clarkson street, the point or place of beginning; that portion of the second assembly district of the county of New York bounded on the northwest by Park row and East Broadway, to Catherine street, along Catherine street to Henry street, thence along Henry street to Market street; on the northeast by Market street to the East river; on the east by the East river; on the south by the East river; on the southwest by Whitehall street and Broadway, from the East river to Beaver street, along Beaver street to William street, and on the west by William

street, along William street to North William street, along North William street to Park row and along Park row to the point or place of beginnings; that portion of the third assembly district of the county of New York bounded on the north by Canal street; on the east by Chrystie street to Division street, along Division street to Catherine street, along Catherine street to East Broadway, to Chatham square, to Worth street; on the south by Worth street, and on the west by Broadway; that portion of the eighth assembly district of the county of New York bounded on the north by Canal street to Division street; on the southeast by Division street to Market street, along Market street to Henry street, along Henry street to Catherine street, along Catherine street to Division street, along Division street to Chrystie street, and on the west by Chrystie street; that portion of the fifth assembly district of the county of New York bounded on the northwest by Christopher street; on the northeast by Bleeker street; on the southeast by Carmine street, along Carmine street to Clarkson street, along Clarkson street to the North river; on the west by the North river, shall compose the eleventh district. The boundaries of said eleventh district are as follows: All of Richmond county, Governor's island, Bedloe's island and Ellis island and that portion of New York county beginning at Christopher st. and North river; northeast along Christopher street to Bleeker street, thence southeast along Bleeker street to Carmine street, thence northeast along Carmine street to Sixth avenue, thence northerly along Sixth avenue to West Third street, thence easterly along West Third street to Sullivan street, thence southerly along Sullivan street to Canal street, thence easterly along Canal street to Division street, thence southwest along Division street to Market street, thence southeast along Market street to the East river, thence southwest along the East river to the North river and northwest along the North river to the point or place of beginning.

Twelfth district. The fourth assembly district of the county of New York; that portion of the second assembly district of the county of New York bounded on the northwest by Henry street, to Clinton street, along Clinton street to Grand street, along Grand street to Gouverneur street, along Gouverneur street to Madison street, along Madison street to Montgomery street, along Montgomery street to Cherry street, along Cherry street to Clinton street, along Clinton street to the East river, along the East river to Market street, along Market street to Henry street; that portion of the sixth assembly district of the county of New York bounded on the north by East Fourth street; on the east by the East river; on the south by Stanton street; on the west by Pitt street and Avenue C and that portion of the eighth assembly district of the county of New York bounded on the north by Stanton street; on the east by Clinton street; on the southeast by Henry street to Market street, along Market street to Division street, along Division street to Essex street; on the west by Essex street to Stanton street, shall compose the twelfth district. The boundaries of the said twelfth district are as follows: Beginning at the East river and Market street; northwest to East Broadway; northeast along East Broadway to Essex street; northerly along Essex street to Stanton street; northeast along Stanton street to Pitt street, northerly along Pitt street and Avenue C to East Fourth street; easterly along East Fourth street to the East river, along the East river to the point or place of beginning.

**Thirteenth district.** That portion of the first assembly district of the county of New York bounded on the north by West Third street; on the east by Broadway; on the south by Canal street; on the west by Sullivan street; that portion of the third assembly district of the county of New York bounded on the north by Great Jones street, to Lafayette street, along Lafayette street to East Fourth street; along East Fourth street to Second avenue; on the east by Second avenue and Chrystie street to Canal street; on the south by Canal street; on the west by Broadway; that portion of the eighth assembly district of the county of New York bounded on the north by Stanton street; on the east by Essex street; on the south by Division and Canal streets; on the west by Christie street; that portion of the sixth assembly district of the county of New York bounded on the north by Second street to Avenue B; along Avenue B to East Fourth street; along East Fourth street to Avenue C; on the east by Avenue C and Pitt street; on the south by Stanton st., on the west by Norfolk st., along Norfolk st. to East Houston st., along East Houston st. to Avenue A, along Avenue A to Second st. and that portion of the tenth assembly district of the county of New York lying south of East Fourth street, shall compose the thirteenth district. The boundaries of the said thirteenth district are as follows: Beginning at West Third and Sullivan streets, easterly along west Third and Great Jones streets to Lafayette street; northerly along Lafayette street to East Fourth street; easterly along East Fourth street to Avenue C; southerly along Avenue C and Pitt street to Stanton street; westerly along Stanton street to Essex street; southerly along Essex street to Division street, to Canal street; westerly along Canal street to Sullivan street; northerly along Sullivan street to the point or place of beginning.

**Fourteenth district.** That portion of the third assembly district of the county of New York lying north of East Fourth street; that portion of the fifth assembly district of the county of New York bounded on the north by West Fourteenth street; on the east by Eighth avenue to Bleecker street, along Bleecker street to Christopher street, along Christopher street to West Fourth street, along West Fourth street to West Washington place, along West Washington place to Sixth avenue, along Sixth avenue to Carmine street, along Carmine street to Bleecker street, along Bleecker street to Christopher street, along Christopher street to the North river, along the North river to West Fourteenth street; that portion of the sixth assembly district of the county of New York lying north of East Fourth street; that portion of the tenth assembly district of the county of New York lying north of East Fourth street, that portion of the twelfth assembly district of the county of New York lying south of East Fourteenth street; that portion of the twenty-fifth assembly district of the county of New York lying south of West and East Fourteenth streets, shall compose the fourteenth district. The boundaries of the said fourteenth district are as follows: Beginning at West Fourteenth street and the North river, running easterly along Fourteenth street to the East river, along the East river to East Fourth street, westerly along East Fourth street to Lafayette street; southerly along Lafayette street to Great Jones street; westerly along Great Jones and Third streets to Sixth avenue; southerly along Sixth avenue to Carmine street, to Bleecker street; northwesterly along Bleecker street to Christopher street; southwest along Christopher street to the North river and along the North river, to the point or place of beginning.



**Fifteenth district.** The territory included within the following boundaries shall compose the fifteenth district: Beginning at the Hudson river and West Sixty-second street, thence easterly along West Sixty-second street to Amsterdam avenue, along Amsterdam avenue to West Sixtieth street, along West Sixtieth street to Columbus avenue, along Columbus and Ninth avenues to West Fifty-fifth street, along West Fifty-fifth street to Eighth avenue, along Eighth avenue to West Thirty-eighth street, along West Thirty-eighth street to Seventh avenue, along Seventh avenue to West Fourteenth street, along West Fourteenth street to the Hudson river, and thence along the Hudson river to West Sixty-second street, the point or place of beginning.

**Sixteenth district.** The territory included within the following boundaries shall compose the sixteenth district: All of Blackwell's island and that portion of the county of New York beginning at the East river and East Sixty-third street, and running westerly along East Sixty-third street to Third avenue, along Third avenue to East Sixty-first street, along East Sixty-first street to Lexington avenue, along Lexington avenue to East Sixty-second street, along East Sixty-second street to Park avenue, along Park and Fourth avenues to East Fourteenth street, along East Fourteenth street to the East river and along the East river to East Sixty-third street, the point or place of beginning.

**Seventeenth district.** The territory included within the following boundaries shall compose the seventeenth district: Beginning at West Eighty-sixth street and the Hudson river: thence easterly along West Eighty-sixth street to Central park west; along Central park west to West Ninety-ninth street, thence across and through Central park to Fifth avenue and East Ninety-ninth street, along East Ninety-ninth street to Lexington avenue, along Lexington avenue to East Seventy-third street, along East Seventy-third street to Third avenue, along Third avenue to East Sixty-first street, along East Sixty-first street to Lexington avenue, along Lexington avenue to East Sixty-second street, along East Sixty-second street to Park avenue, along Park and Fourth avenues to East Fourteenth street, along East Fourteenth street and West Fourteenth street to Seventh avenue, along Seventh avenue to West Thirty-eighth street, along West Thirty-eighth street to Eighth avenue, along Eighth avenue to West Fifty-fifth street, along West Fifty-fifth street to Ninth avenue, along Ninth and Columbus avenues to West Sixtieth street, along West Sixtieth street to Amsterdam avenue, along Amsterdam avenue to West Sixty-second street, along West Sixty-second street to the Hudson river and along the Hudson river to West Eighty-sixth street, the point or place of beginning.

**Eighteenth district.** The territory included within the following boundaries shall compose the eighteenth district: Beginning at the East river and East Sixty-third street, thence westerly along East Sixty-third street to Third avenue, along Third avenue to East Seventy-third street, along East Seventy-third street to Lexington avenue, along Lexington avenue to East Ninety-ninth street, along East Ninety-ninth street to the East river and along the East river to East Sixty-third street, the point or place of beginning.

**Nineteenth district.** All that portion of the fifteenth assembly district of the county of New York lying north of West Eighty-sixth street; that portion of the seventeenth assembly district of the county of New York lying north of West Eighty-sixth street; that portion of the nineteenth assembly district of the county of New York beginning at the intersection of West One Hundred and Twenty-fifth street and Morningside avenue east,



running thence westerly along said West One Hundred and Twenty-fifth street to Riverside park and across said park to the North river, inclusive of all that portion of the last aforementioned assembly district lying south thereof; that portion of the twenty-first assembly district of the county of New York lying south of West One Hundred and Twenty-fifth street; that portion of the thirty-first assembly district of the county of New York lying south of West One Hundred and Twenty-fifth street and west of Fifth avenue; that portion of the twenty-sixth assembly district of the county of New York bounded on the north by East One Hundred and Sixteenth street; on the east by Madison avenue; on the south by East One Hundred and Tenth street; on the west by Fifth avenue, shall compose the nineteenth district. The boundaries of the said nineteenth district are as follows: Beginning at the North river, at a point opposite the westerly end of West One Hundred and Twenty-fifth street, running easterly across Riverside park into and along West One Hundred and Twenty-fifth street to Fifth avenue; southerly along Fifth avenue and across Mount Morris park, into and along Fifth avenue to East One Hundred and Sixteenth street; easterly along East One Hundred and Sixteenth street to Madison avenue; southerly along Madison avenue to East One Hundred and Tenth street; westerly along East One Hundred and Tenth street to Fifth avenue; southerly along Fifth avenue to East Ninety-ninth street; westerly across Central park to West Ninety-ninth street; westerly across Central park to West Ninety-ninth street and Central park west; southerly along Central park west to West Eighty-sixth street; westerly along West Eighty-sixth street to the North river and along the North river to the point or place of beginning.

Twentieth district. That portion of the twenty-fourth assembly district of the county of New York lying north of East Ninety-ninth street, that portion of the twenty-sixth assembly district of the county of New York bounded on the north by East One Hundred and Twentieth street; on the east by Park avenue to East One Hundred and Eighth street, along East One Hundred and Eighth street to Lexington avenue, along Lexington avenue to East One Hundred and Fifth street, along East One Hundred and Fifth street to Park avenue, along Park avenue to East One Hundredth street, along East One Hundredth street to Lexington avenue, along Lexington avenue to East Ninety-ninth street, south by East Ninety-ninth street, on the west by Fifth avenue to East One Hundred and Tenth street, along East One Hundred and Tenth street to Madison avenue, along Madison avenue to East One Hundred and Sixteenth street, along East One Hundred and Sixteenth street to Fifth avenue, along Fifth avenue to East One Hundred and Twentieth street; Ward's island and Randall's island and that portion of the twenty-eighth assembly district of the county of New York south of East

One Hundred and Eighteenth street; that portion of the thirtieth assembly district of the county of New York bounded on the north by East One Hundred and Eighteenth street; east by Second avenue; south by East One Hundred and Seventeenth street; west by Third avenue; and in addition that portion of the last aforementioned assembly district bounded on the north by East One Hundred and Seventeenth street; on the east by the East river; on the south by East One Hundred and Sixteenth street to Pleasant avenue, along Pleasant avenue to East One Hundred and Fifteenth street, along East One Hundred and Fifteenth street to Second avenue; on the west by Second avenue, shall compose the twentieth district. The boundaries of the said twentieth district are as follows: All of Ward's island and Randall's island and that portion of New York county beginning at the intersection of Fifth avenue and East One Hundred and Twentieth street, along East One Hundred and Twentieth street to Park avenue; southerly on Park avenue to East One Hundred and Eighteenth st.; easterly along East One Hundred and Eighteenth street to Second avenue; southerly along Second avenue to East One Hundred and Seventeenth street; easterly along East One Hundred and Seventeenth street to the East river, along the East river to East Ninety-ninth street; westerly along East Ninety-ninth street to Fifth avenue; northerly along Fifth avenue to East One Hundred and Tenth street; easterly along East One Hundred and Tenth street to Madison avenue; northerly along Madison avenue to East One Hundred and Sixteenth street; westerly along East One Hundred and Sixteenth street to Fifth avenue; northerly along Fifth avenue to East One Hundred and Twentieth street, the point or place of beginning.

Twenty-first district. The territory included within the following boundaries shall compose the twenty-first district: That portion of the county of New York beginning at the intersection of Fifth avenue and West One Hundred and Twenty-fifth street and running thence westerly along West One Hundred and Twenty-fifth street to the Hudson river, and thence along the Hudson river to Spuyten Duyvil creek, thence through Spuyten Duyvil creek and the Harlem river, and along the boundary line between New York and Bronx counties to Eighth avenue; thence southerly along Eighth avenue to West One Hundred and Forty-fifth street, along West One Hundred and Forty-fifth street to the Harlem river and along the Harlem river to Fifth avenue, and along Fifth avenue to West One Hundred and Twenty-fifth street, the point or place of beginning.

Twenty-second district. The territory included within the following boundaries shall compose the twenty-second district: North Brother's island, South Brother's island, Riker's island, and that portion of the county of New York, beginning at the Harlem river and East One Hundred and Seventeenth street, and thence westerly along East One Hundred and Seventeenth

street to Second avenue, along Second avenue to East One Hundred and Eighteenth street, along East One Hundred and Eighteenth street to Park avenue, along Park avenue to East One Hundred and Twentieth street, along East One Hundred and Twentieth street to Fifth avenue, thence through Mount Morris park and along Fifth avenue to the Harlem river, and along the Harlem river to West One Hundred and Forty-fifth street, along West One Hundred and Forty-fifth street to Eighth avenue, along Eighth avenue to the Harlem river, thence along the Harlem river to East One Hundred and Seventeenth street, the point or place of beginning, and that portion of the county of Bronx beginning at Jerome avenue and the Harlem river, thence along Jerome avenue to East One Hundred and Sixty-first street, and along East One Hundred and Sixty-first street to Melrose avenue, along Melrose avenue to East One Hundred and Fifty-seventh street, along East One Hundred and Fifty-seventh street to Third avenue, along Third avenue to East One Hundred and Fifty-sixth st., along East One Hundred and Fifty-sixth street to Saint Ann's avenue, along Saint Ann's avenue to East One Hundred and Forty-ninth street, along East One Hundred and Forty-ninth street to the East river, thence along the East river, Bronx kills and the Harlem river to Jerome avenue, the point or place of beginning.

Twenty-third district. The territory within the following boundaries shall compose the twenty-third district: That portion of Bronx county beginning at the Harlem river and Jerome avenue, thence along Jerome avenue to East One Hundred and Sixty-first street, along East One Hundred and Sixty-first street to Melrose avenue, along Melrose avenue to East One Hundred and Fifty-seventh street, along East One Hundred and Fifty-seventh street to Third avenue, along Third avenue to East One Hundred and Fifty-sixth street, along East One Hundred and Fifty-sixth street to Saint Ann's avenue, along Saint Ann's avenue to East One Hundred and Forty-ninth street, along East One Hundred and Forty-ninth street to Prospect avenue, along Prospect avenue to Freeman street, along Freeman street to Southern boulevard, along Southern boulevard to Pelham avenue, along Pelham avenue to Bronx river, along the Bronx river to the city line, along the city line to the Hudson river, along the Hudson river to Spuyten Duyvil creek, thence through Spuyten Duyvil creek to the Harlem river, and along the line separating New York from Bronx counties to Jerome avenue, the point or place of beginning.

Twenty-fourth district. City island, Hunter's island, Hart's island, Twin island, High island, Middle Reef island, Rat island, The Bluezes and Chimney Sweep, that part of the thirty-second assembly district in the county of New York bounded on the north by the boundary line between the city of New York and the city of Mount Vernon, along said boundary line to Long Island sound, along Long Island sound to the East river, to East One Hundred and Forty ninth st., along East One Hundred and Forty ninth st. to Prospect ave.,

along Prospect ave. to Freeman ave., along Freeman ave. to Southern boulevard, along Southern boulevard to Pelham ave., along Pelham ave. to Bronx river, along the Bronx river to the boundary line between the city of New York and the city of Mount Vernon, and that portion of the county of Westchester containing the city of Yonkers, the city of Mount Vernon, the town of Eastchester and the town of Pelham, shall compose the twenty-fourth district. The boundaries of the said twenty-fourth district are as follows: All of City island, Hunter's island, Hart's island, Twin island, Middle Reef island, Rat island, The Blueses and Chimney Sweep and beginning at the Bronx river at the intersection of said river and the boundary line between the city of New York and the city of Yonkers, running westerly along said boundary line between the city of New York and the city of Yonkers, to the Hudson river, along the Hudson river northerly to the boundary lines of the city of Yonkers and the town of Greenburg; easterly along the said boundary line to the point where said boundary line meets the boundary lines between the towns of Greenburg, Scarsdale and Eastchester, thence southeast along the boundary line between the towns of Scarsdale and Eastchester; southerly along the boundary line between the town of Eastchester and the city of New Rochelle, and along said boundary line to the point where said boundary line meets the boundary line of the city of Mount Vernon and the town of Pelham, and along the boundary line between the city of New Rochelle and the town of Pelham to Long Island sound, to the East river, along the East river to East One Hundred and Forty-ninth st., in the borough of the Bronx; northwesterly along East One Hundred and Forty-ninth street to Prospect avenue; northerly along Prospect avenue to Freeman avenue; northeasterly on Freeman avenue to Southern boulevard; northerly through Southern boulevard to Pelham avenue; easterly on Pelham avenue to the Bronx river, along the Bronx river to the intersecting boundary line of the city of New York and the city of Yonkers, the point or place of beginning.

Twenty-fifth district. The county of Rockland and the county of Westchester, except that portion lying within the city of Yonkers, the city of Mount Vernon, the town of Eastchester and the town of Pelham as at present constituted, shall compose the twenty-fifth district.

Twenty-sixth district. The counties of Orange, Putnam and Dutchess shall compose the twenty-sixth district.

Twenty-seventh district. The counties of Sullivan, Ulster, Greene, Columbia and Schoharie shall compose the twenty-seventh district.

Twenty-eighth district. The county of Albany, and the first, second, third, fourth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth wards of the city of Troy, as now constituted, shall compose the twenty-eighth district.

Twenty-ninth district. All of the county of Rensselaer, except the first,

second, third, fourth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth wards of the city of Troy, as now constituted, the counties of Washington, Saratoga and Warren shall compose the twenty-ninth district.

Thirtieth district. The counties of Schenectady, Montgomery, Fulton and Hamilton shall compose the thirtieth district.

Thirty-first district. The counties of Essex, Clinton, Franklin and Saint Lawrence shall compose the thirty-first district.

Thirty-second district. The counties of Jefferson, Lewis, Oswego and Madison shall compose the thirty-second district.

Thirty-third district. The counties of Oneida and Herkimer shall compose the thirty-third district.

Thirty-fourth district. The counties of Otsego, Delaware, Broome and Chemango shall compose the thirty-fourth district.

Thirty-fifth district. The counties of Onondaga and Cortland shall compose the thirty-fifth district.

Thirty-sixth district. The counties of Cayuga, Wayne, Seneca, Yates and Ontario shall compose the thirty-sixth district.

Thirty-seventh district. The counties of Tompkins, Tioga, Chemung, Schuyler and Steuben shall compose the thirty-seventh district.

Thirty-eighth district. The first, second, third and fourth assembly districts of the county of Monroe, as now constituted, shall compose the thirty-eighth district.

Thirty-ninth district. The fifth assembly district of the county of Monroe, as now constituted, and the counties of Orleans, Genesee, Wyoming and Livingston, shall constitute the thirty-ninth district.

Fortieth district. The county of Niagara, and that part of the county of Erie comprising the towns of Grand Island, Tonawanda, the city of Tonawanda, and the twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth wards of the city of Buffalo, as now constituted, shall compose the fortieth district.

Forty-first district. [Boundaries as described in the act of 1911 are superseded by L. 1918, ch. 250, § 1, which reads as follows:

§ 1. The forty-first district of the state of New York for the election of representatives in congress of the United States as heretofore described by chapter eight hundred and ninety of the laws of nineteen hundred and eleven, entitled "An act dividing the state into congressional districts," shall hereafter consist of that part of the county of Erie comprising the towns of Alden, Amherst, Cheektowaga, Clarence, Elma, Lancaster, Marilla and Newstead, and the sixth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-sixth and twenty-seventh wards

of the city of Buffalo, as said towns and wards are constituted at the time this act takes effect.]

Forty-second district. [Boundaries as described in the act of 1911 are superseded by L. 1918, ch. 250, § 2, which reads as follows:

§ 2. The forty-second district of the state of New York for the election of representatives in congress of the United States as heretofore described by such chapter shall hereafter consist of that part of the county of Erie comprising the towns of Aurora, Boston, Brant, Colden, Collins, Concord, East Hamburg, Eden, Evans, Hamburg, Holland, North Collins, Sardinia, Wales and West Seneca, the city of Lackawanna, and the first, second, third fourth, fifth, seventh, eighth, ninth, tenth and eleventh wards of the city of Buffalo, as said towns and wards are constituted at the time this act takes effect.]

Forty-third district. The counties of Chautauqua, Cattaraugus and Allegany shall compose the forty-third district.

§ 2. **Assembly districts, towns, wards and election districts defined.** The words "assembly district" when used in this act refer to assembly districts as at present constituted. Whenever the word "town," "towns," "ward," "wards," "election district" or "election districts" is used in this act it shall be understood to refer to the town, towns, ward, wards, election district or election districts as constituted at the time of the passage of this act.

§ 3. **Repeal.** All acts or parts of acts inconsistent with this act are hereby repealed.\*

§ 4. This act shall take effect immediately.

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\* State Law, §§ 110 and 111 are apparently repealed and superseded by this act.





## SENATE DISTRICTS AND APPORTIONMENT OF THE MEMBERS OF ASSEMBLY OF THE STATE.

**Senate districts.** The senate districts of this state from and after the time this section takes effect, shall consist as follows:

First. The first senate district shall consist of the counties of Nassau and Suffolk.

Second. The second senate district shall consist of that part of the county of Queens, within and bounded by a line, beginning at Strong causeway on Flushing creek and running thence along Flushing creek to the junction of Ireland Mill road, thence along Ireland Mill road to Lawrence street, to Bradford avenue, to Main street, to Lincoln street, to Union avenue, to Whitestone avenue, to Bayside avenue, to Little Bayside road, to Poppenhausen avenue, to Bell avenue, to Mulford avenue, to the waters of Little Neck bay, thence easterly through the waters of Little Neck bay to the boundary line of Queens and Nassau counties, thence southerly along said boundary line to the Atlantic ocean, thence westerly through the waters of the Atlantic ocean to the boundary line of Kings and Queens counties, thence northerly along said boundary line to Woodbine street, thence along Woodbine street to Woodward avenue, to Palmetto street, to Grandview avenue, to Linden street, to Forest avenue, to Gates avenue, to Fresh Pond road, to Woodbine street, to Long Island railroad, to Woodhaven avenue, to White Pot road, to Astoria road, to North Hempstead plank road, to Lawn avenue, to the stream connecting Lawn avenue and Flushing creek, thence along said stream to its junction with Flushing creek, thence along Flushing creek to Strong causeway, the place of beginning.

Third. The third senate district shall consist of that part of the county of Queens, within and bounded by a line, beginning at Strong causeway on Flushing creek and running thence along Flushing creek to the junction of Ireland Mill road, thence along Ireland Mill road to Lawrence street, to Bradford avenue, to Main street, to Lincoln street, to Union avenue, to Whitestone avenue, to Bayside avenue, to Little Bayside road, to Poppenhausen avenue, to Bell avenue, to Mulford avenue, to the waters of Little Neck bay, thence northerly, westerly and southerly through the waters of Little Neck bay, Long Island sound, East river and Newtown creek to the boundary line of Kings and Queens counties, thence southerly along said boundary line to Woodbine street, thence along Woodbine street, to Woodward avenue, to Palmetto street, to Grandview avenue, to Linden street, to Forest avenue, to Gates avenue, to Fresh Pond road, to Woodbine street, to Long Island railroad, to Woodhaven avenue, to White Pot road, to Astoria road, to North Hempstead plank road, to Lawn avenue, to the stream connecting Lawn avenue and Flushing creek, thence along said stream to its junction with Flushing creek, thence along Flushing creek to Strong causeway, the place of beginning.

Fourth. The fourth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the intersection of Sutter avenue and Williams avenue and running thence along Williams avenue to Blaks avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters

of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line of Kings and Queens counties, thence southerly and westerly, along said boundary line, south of Barren Island, to the Atlantic ocean, thence westerly and northerly through the waters of Atlantic ocean, Gravesend bay, the Narrows and New York bay to the junction of Sixty-third street, thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue (or parkway), to Thirty-ninth street, to Twelfth avenue, to Fortieth street, to Thirteenth avenue, to Forty-first street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue, to Fiftieth street, to Sixteenth avenue, to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue (or Parkville avenue), to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road, to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thattford avenue, to Lavinia avenue, to Osborn street, to Dumont avenue, to Thattford avenue, to Sutter avenue, and thence along Sutter avenue to Williams avenue the place of beginning.

Fifth. The fifth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the junction of New York bay and Sixty-third street, and running thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue (or parkway), to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's avenue, to Fourth avenue, to Bergen street, to Boerum place, to Dean street, to Court street, to Amity street, to Clinton street, to Warren street, to Columbia street, to Congress street, to the waters of the East river, thence southerly through the waters of the East river, Buttermilk channel and New York bay to the place of beginning.

Sixth. The sixth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the intersection of Bergen street and Nevins street, and running thence along Nevins street to Atlantic avenue, to Bond street, to Fulton street, to Hudson avenue to De Kalb avenue, to Washington Park (or Cumberland street), to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Lafayette avenue, to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue (or Washington avenue), to Mulhove street, to Ocean avenue, to Parkside avenue, to Parade place, to Canton avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C (or Avenue C west), to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-first street, to Thirtieth avenue, to Fortieth street, to Twelfth avenue, to Thirty-ninth street, to Fort Hamilton avenue (or parkway), to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's

avenue, to Fourth avenue, to Bergen street and thence along Bergen street to the place of beginning.

Seventh. The seventh senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of Nostrand ave. and Flushing ave., and running thence along Flushing ave. to Broadway, to Hopkinson avenue, to MacDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Sumner avenue, to MacDonough street, to Lewis avenue, to Greene avenue, to Nostrand avenue and thence along Nostrand avenue to the place of beginning.

Eighth. The eighth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of Nostrand avenue and Lafayette avenue and running thence along Lafayette avenue to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue (or Washington avenue), to Malbone street, to Ocean avenue, to Parkside avenue, to Parade place, to Caton avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C (or Avenue C west), to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue, to Fiftieth street, to Sixteenth avenue, to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue (or Parkville avenue), to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road, to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thatford avenue, to Livonia avenue, to Osborn street, to Dumont avenue, to Thatford avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Sumner avenue, to MacDonough street, to Lewis avenue, to Greene avenue, to Nostrand avenue and thence along Nostrand avenue to the place of beginning.

Ninth. The ninth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of the boundary line of Kings and Queens counties and Stanhope street and running thence along Stanhope street to Hamburg avenue, to De Kalb avenue, to Broadway, to Hopkinson avenue, to MacDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Blake avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line between Kings and Queens counties, thence northerly and westerly along said boundary line to the place of beginning.

Tenth. The tenth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the junction of the East river and North Eleventh street, and running thence along North Eleventh street to Berry street, to North Twelfth street, to Union avenue, to

Frost street, to Lorimer street, to Broadway, to Walton street, to Throop avenue, to Lorimer street, to Harrison avenue, to Flushing avenue, to Broadway, to De Kalb avenue, to Hamburg avenue, to Stanhope street, to the boundary line of Kings and Queens counties, thence along said boundary line to Newtown creek, thence northerly, westerly and southerly, through the waters of Newtown creek and the East river to the place of beginning.

Eleventh. The eleventh senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the junction of Congress street and Buttermilk channel and running thence along Congress street to Columbia street, to Warren street, to Clinton street, to Amity street, to Court street, to Dean street, to Boerum place, to Bergen street, to Nevins street, to Atlantic avenue, to Bond street, to Fulton street, to Hudson avenue, to De Kalb avenue, to Washington park (or Cumberland street), to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Flushing avenue, to Harrison avenue, to Lorimer street, to Throop avenue, to Walton street, to Broadway, to Lorimer street, to Frost street, to Union avenue, to North Twelfth street, to Berry street, to North Eleventh street, to the waters of the East river, thence southerly through the waters of the East river and Buttermilk channel to the place of beginning.

Twelfth. The twelfth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West Tenth street and running thence along West Tenth street to Greenwich street, to Charles street, to Bleecker street, to Christopher street, to West Fourth street, to West Washington place, to Sixth avenue, to West Third street, to Broadway, to East Fourth street, to Second avenue, to East Houston street, to Ludlow street, to Broome street, to Essex street, to Grand street, to Gouverneur street, to Cherry street, to Scammel street, to Water street, to Gouverneur slip, to the East river, thence through the waters of the East river and Hudson river to the place of beginning and including Governor's, Ellis, Bedloe's and Oyster islands.

Thirteenth. The thirteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West Sixty-third street and running thence along West Sixty-third street to Columbus avenue, to Ninth avenue, to West Fifty-seventh street, to Eighth avenue, to West Forty-fourth street, to Seventh avenue, to West Forty-third street, to Eighth avenue, to West Thirty-seventh street, to Seventh avenue, to West Fourteenth street, to Eighth avenue, to Bleecker street, to Bank street, to West Fourth street, to West Eleventh street, to Bleecker street, to Charles street, to Greenwich street, to West Tenth street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Fourteenth. The fourteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East river and East Eighteenth street and running thence along East Eighteenth street to Avenue B, to East Seventeenth street, to First avenue, to East Sixteenth street, to Third avenue, to East Fifteenth street, to Irving place, to East Fourteenth street, to Fourth avenue, to Astor place, to Broadway, to East Fourth street, to Second avenue, to East Houston street, to Ludlow street, to Broome street, to Essex street, to Grand street, to Gouverneur street, to Cherry street, to Scammel street, to Water street, to Gouverneur slip, to the East river, thence through the waters of the East river to the place of beginning.

**Fifteenth.** The fifteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West One Hundred and Sixteenth street and running thence along West One Hundred and Sixteenth street to Broadway, to West One Hundred and Fourteenth street, to Amsterdam avenue, to West One Hundred and Sixteenth street, to Columbus avenue (or Morningside avenue east), to West One Hundred and Nineteenth street, to Saint Nicholas avenue, to West One Hundred and Eighteenth street, to Seventh avenue, to West One Hundred and Tenth street, to Eighth avenue (or Central park west), to West Sixty-second street, to Broadway, to Eighth avenue (or Central park west), to West Fifty-eighth street, to Ninth avenue, to Columbus avenue, to West Sixty-third street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

**Sixteenth.** The sixteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East river and East Eighty-first street and running thence along East Eighty-first street to East End avenue, to East Eighty-fourth street, to Avenue A, to East Seventy-seventh street, to Third avenue, to East Seventy-sixth street, to Lexington avenue, to East Seventy-fourth street, to Third avenue, to East Fifty-second street, to Lexington avenue, to East Fortieth street, to Third avenue, to East Thirty-fourth street, to Lexington avenue, to East Twenty-second street, to Third avenue, to East Sixteenth street, to First avenue, to East Seventeenth street, to Avenue B, to East Eighteenth street, to the East river, thence through the waters of the East river to the place of beginning and including Blackwell's island.

**Seventeenth.** The seventeenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the intersection of Seventh ave. and West One Hundred and Eighteenth st. and running thence along West One Hundred and Eighteenth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Seventy-ninth street, to Third avenue, to East Seventy-sixth street, to Lexington avenue, to East Seventy-fourth street, to Third avenue, to East Fifty-second street, to Lexington avenue, to East Fortieth street, to Third avenue, to East Thirty-fourth street, to Lexington avenue, to East Twenty-second street, to Third avenue, to East Fifteenth street, to Irving place, to East Fourteenth street, to Fourth avenue, to Astor place, to Broadway, to West Third street, to Sixth avenue, to West Washington place, to West Fourth street, to Christopher street, to Bleecker street, to West Eleventh street, to West Fourth street, to Bank street, to Bleecker street, to Eighth avenue, to West Fourteenth street, to Seventh avenue, to West Thirty-seventh street, to Eighth avenue, to West Forty-third street, to Seventh avenue, to West Forty-fourth street, to Eighth avenue, to West Fifty-seventh street, to Ninth avenue, to West Fifty-eighth street, to Eighth avenue (or Central park west), to Broadway, to West Sixty-second street, to Eighth avenue (or Central park west), to West One Hundred and Tenth street, to Seventh avenue, and thence along Seventh avenue to the place of beginning.

**Eighteenth.** The eighteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East river and East One Hundred and Fifteenth street and running thence along East One Hundred and Fifteenth street to Second avenue, to East One Hundred and Eighteenth street, to Third avenue, to East One



Hundred and Seventeenth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Seventy-ninth street, to Third avenue, to East Seventy-seventh street, to Avenue A, to East Eighty-fourth street, to East End avenue, to East Eighty-first street, to the East river, thence through the waters of the East river to the place of beginning and including Ward's island.

Nineteenth. The nineteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West One Hundred and Thirty-sixth street and running thence along West One Hundred and Thirty-sixth street to Lenox avenue, to West One Hundred and Thirty-seventh street, to East One Hundred and Thirty-seventh street, to Madison avenue, to East One Hundred and Thirty-fourth street, to the Harlem river, thence through the waters of the Harlem river, Bronx kills, East river and Little Hell Gate to the junction of East One Hundred and Fifteenth street, thence along East One Hundred and Fifteenth street to Second avenue, to East One Hundred and Eighteenth street, to Third avenue, to East One Hundred and Seventeenth street, to Park avenue, to East One Hundred and Eighteenth street, to West One Hundred and Eighteenth street, to Saint Nicholas avenue, to West One Hundred and Nineteenth street, to Columbus avenue (or Morningside avenue east), to West One Hundred and Sixteenth street, to Amsterdam avenue, to West One Hundred and Fourteenth street, to Broadway, to West One Hundred and Sixteenth street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning and including Randall's island and Sunken meadow.

Twentieth. The twentieth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West One Hundred and Thirty-sixth street and running thence along West One Hundred and Thirty-sixth street to Lenox avenue, to West One Hundred and Thirty-seventh street, to East One Hundred and Thirty-seventh street, to Madison avenue, to East One Hundred and Thirty-fourth street, to the junction of the Harlem river, thence easterly through the waters of the Harlem river to the boundary line between New York and Bronx counties, thence northerly and westerly along said boundary line to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Twenty-first. The twenty-first senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of the East river and East One Hundred and Fortieth street and running thence along East One Hundred and Fortieth street, to Locust avenue, to East One Hundred and Forty-first street, to Jackson avenue, to East One Hundred and Forty-fifth street, to Trinity avenue, to East One Hundred and Forty-ninth street, to Saint Ann's avenue, to East One Hundred and Fifty-sixth street, to Cauldwell avenue, to East One Hundred and Sixty-fourth street, to Boston road, to Third avenue, to East One Hundred and Sixty-sixth street, to Washington avenue, to East One Hundred and Seventy-fifth street, to Park avenue, to East One Hundred and Seventy-seventh street, to East One Hundred and Seventy-sixth street, to Anthony avenue, to East Tremont avenue, to Mount Hope avenue, to East One Hundred and Seventy-sixth street, to Morris avenue, to Mount Hope place, to Walton avenue, to East One Hundred and Seventy-seventh street, to West One Hundred and Seventy-seventh street, to West Tremont avenue, to Macombs road, to Featherbed

lane, to Aqueduct avenue, to West One Hundred and Seventy-second street, to the Harlem river, thence through the waters of the Harlem river, Bronx kills and East river to the place of beginning.

Twenty-second. The twenty-second senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of the East river and East One Hundred and Fortieth street and running thence along East One Hundred and Fortieth street to Locust avenue, to East One Hundred and Forty-first street, to Jackson avenue, to East One Hundred and Forty-fifth street, to Trinity avenue, to East One Hundred and Forty-ninth street, to Saint Ann's avenue, to East One Hundred and Fifty-sixth street, to Cauldwell avenue, to East One Hundred and Sixty-fourth street, to Boston road, to Third avenue, to East One Hundred and Sixty-sixth street, to Washington avenue, to East One Hundred and Seventy-fifth street, to Arthur avenue, to Crotona park north, to East One Hundred and Seventy-fifth street, to Hoe avenue, to East One Hundred and Seventy-fourth street, to the Bronx river, thence through the waters of the Bronx and East rivers to the place of beginning, and including Riker's, South Brothers and North Brothers islands.

Twenty-third. The twenty-third senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of West One Hundred and Seventy-second street and the Harlem river and running thence westerly through the waters of the Harlem river to the boundary line between New York and Bronx counties, thence northerly and westerly along said boundary line to the Hudson river, thence northerly through the waters of the Hudson river to the northerly boundary line of the city of New York, thence along the northerly and easterly boundary lines of the city of New York to the East river, thence through the waters of the East and Bronx rivers to East One Hundred and Seventy-fourth street, thence along East One Hundred and Seventy-fourth street to Hoe avenue, to East One Hundred and Seventy-fifth st., to Crotona park north, to Arthur ave., to East One Hundred and Seventy-fifth street, to Park avenue, to East One Hundred and Seventy-seventh street, to East One Hundred and Seventy-sixth street, to Anthony avenue, to East Tremont avenue, to Mount Hope avenue, to East One Hundred and Seventy-sixth street, to Morris avenue, to Mount Hope place, to Walton avenue, to East One Hundred and Seventy-seventh street, to West One Hundred and Seventy-seventh street, to West Tremont avenue, to Macombs road, to Featherbed lane, to Aqueduct avenue, to West One Hundred and Seventy-second street, thence along West One Hundred and Seventy-second street to the place of beginning.

Twenty-fourth. The twenty-fourth senate district shall consist of the counties of Richmond and Rockland.

Twenty-fifth. The twenty-fifth senate district shall consist of that part of the county of Westchester comprising the towns of Bedford, Eastchester, Harrison, Lewisboro, Mamaroneck, New Castle, North Castle, North Salem, Pelham, Poundridge, Rye, Scarsdale, Somers, and Yorktown; together with the cities of Mount Vernon, New Rochelle, White Plains, and that part of the city of Yonkers within and bounded by a line, beginning at the intersection of Sherwood avenue and the westerly boundary line of the city of Mount Vernon and running thence along Sherwood avenue to the Bronx river road, to Yonkers avenue, to Vernon place, to Leonard place, to Richfield place, to Yonkers avenue, to Kimball avenue, to the northerly boundary line of the city of New York, thence easterly along said boundary line to the

easterly boundary line of the city of Yonkers, thence northerly along said boundary line to the place of beginning

Twenty-sixth. The twenty-sixth senate district shall consist of that part of the county of Westchester comprising the towns of Greenburgh, Mount Pleasant, Ossining and Cortland; together with all the remainder of the city of Yonkers not hereinbefore described as a part of the twenty-fifth senate district.

Twenty-seventh. The twenty-seventh senate district shall consist of the counties of Orange and Sullivan.

Twenty-eighth. The twenty-eighth senate district shall consist of the counties of Putnam, Dutchess and Columbia.

Twenty-ninth. The twenty-ninth senate district shall consist of the counties of Ulster, Greene and Delaware.

Thirtieth. The thirtieth senate district shall consist of the county of Albany.

Thirty-first. The thirty-first senate district shall consist of the county of Rensselaer.

Thirty-second. The thirty-second senate district shall consist of the counties of Saratoga and Schenectady.

Thirty-third. The thirty-third senate district shall consist of the counties of Clinton, Essex, Warren and Washington.

Thirty-fourth. The thirty-fourth senate district shall consist of the counties of Saint Lawrence and Franklin.

Thirty-fifth. The thirty-fifth senate district shall consist of the counties of Lewis, Herkimer, Hamilton and Fulton.

Thirty-sixth. The thirty-sixth senate district shall consist of the county of Oneida.

Thirty-seventh. The thirty-seventh senate district shall consist of the counties of Jefferson and Oswego.

Thirty-eighth. The thirty-eighth senate district shall consist of the county of Onondaga.

Thirty-ninth. The thirty-ninth senate district shall consist of the counties of Madison, Otsego, Montgomery and Schoharie.

Fortieth. The fortieth senate district shall consist of the counties of Cortland, Broome and Chenango.

Forty-first. The forty-first senate district shall consist of the counties of Schuyler, Tompkins, Chemung and Tioga.

Forty-second. The forty-second senate district shall consist of the counties of Cayuga, Seneca and Wayne.

Forty-third. The forty-third senate district shall consist of the counties of Ontario, Yates and Steuben.

Forty-fourth. The forty-fourth senate district shall consist of the counties of Genesee, Wyoming, Allegany and Livingston.

Forty-fifth. The forty-fifth senate district shall consist of that part of the county of Monroe comprising the towns of Webster, Irondequoit, Penfield, Perinton, Pittsford, Brighton, Henrietta, Rush and Mendon; together with the fourth, sixth, seventh, eighth, twelfth, the third and fourth election districts and that part of the second election district bounded by the Erie canal, Averill avenue, South avenue, Byron street and Clinton avenue south of the thirteenth, the sixteenth, seventeenth (excepting that part of the first election district bounded by Avenue A, Gladys street, Nillon street and Harris street), the eighteenth, twenty-first and twenty-second wards of the

city of Rochester, constituted as shown on maps accompanying the report of the secretary of state of the enumeration of inhabitants nineteen hundred and fifteen.

**Forty-sixth.** The forty-sixth senate district shall consist of that part of the county of Monroe comprising the towns of Greece, Gates, Chili, Wheatland, Clarkson, Riga, Sweden, Ogden, Parma, and Hamlin; together with the first, second, third, fifth, ninth, tenth, eleventh, the first election district and that part of the second election district bounded by the Erie canal, Clinton avenue south, Byron street and South avenue, of the thirteenth, the fourteenth, fifteenth, that part of the first election district of the seventeenth, bounded by Avenue A, Gladys street, Nillon street and Harris street, the nineteenth, twentieth and twenty-third wards of the city of Rochester constituted as shown on maps accompanying the report of the secretary of state of the enumeration of inhabitants nineteen hundred and fifteen.

**Forty-seventh.** The forty-seventh senate district, shall consist of the counties of Orleans and Niagara.

**Forty-eighth.** The forty-eighth senate district shall consist of that part of the county of Erie within and bounded by a line beginning at the intersection of the northerly boundary line of the city of Buffalo and Delaware avenue and running thence along Delaware avenue to Tacoma avenue, to Tennyson avenue, to Hertel avenue, to Delaware avenue, to Scajaquada creek, thence through the waters of Scajaquada creek to Main street, thence along Main street to Riley street, to Michigan avenue, to Northampton street, to Jefferson street, to Best street, to Herman street, to High street, to Fox street, to Genesee street, to Sherman street, to Broadway, to Madison street, to William street, to Union street, to East Eagle street, to Main street, to Exchange street, to Washington street, to New York Central railroad, to Main street, to the Buffalo river, thence through the waters of the Buffalo river to Lake Erie, thence through the waters of Lake Erie and the Niagara river, along the international boundary line, to the northerly boundary line of the city of Buffalo, thence along said boundary line to the place of beginning.

**Forty-ninth.** The forty-ninth senate district shall consist of that part of the county of Erie within and bounded by a line, beginning at the intersection of the easterly boundary line of the city of Buffalo and East Delavan avenue and running thence along East Delavan avenue, to Northumberland avenue, to East Ferry street, to Montana avenue, to Genesee street, to New York Central belt line, to Walden avenue, to Herman street, to High street, to Fox street, to Genesee street, to Sherman street, to Broadway, to Madison street, to Williams street, to Union street, to East Eagle street, to Main street, to Exchange street, to Washington street, to New York Central railroad, to Main street, to the Buffalo river, thence through the waters of the Buffalo river to Lake Erie, thence southerly through the waters of Lake Erie to the southerly boundary line of the city of Buffalo, thence along the said southerly and easterly boundary lines of the city of Buffalo to the place of beginning.

**Fiftieth.** The fiftieth senate district shall consist of that part of the county of Erie comprising the towns of Alden, Amherst, Aurora, Boston, Brant, Cheektowaga, Clarence, Colden, Collins, Concord, East Hamburg, Eden, Elma, Evans, Grand Island, Hamburg, Holland, Lancaster, Marilla, Newstead, North Collins, Sardinia, Tonawanda, Wales and West Seneca; together with

the cities of Tonawanda, Lackawanna and that part of the city of Buffalo within and bounded by a line, beginning at the intersection of the northerly boundary of the city of Buffalo and Delaware avenue and running thence along Delaware avenue to Tacoma avenue, to Tennyson avenue, to Hertel avenue, to Delaware avenue, to Scatsquada creek, thence through the waters of Scatsquada creek to Main street, thence along Main street to Riley street, to Michigan avenue, to Northampton street, to Jefferson street, to West street, to Walden avenue, to New York Central belt line, to Genesee street, to Montana avenue, to East Ferry street, to Northumberland avenue, to East Delavan avenue, to the easterly boundary line of the city of Buffalo, thence along the said easterly and northerly lines of the city of Buffalo to the place of beginning.

Fifty first. The fifty-first senate district shall consist of the counties of Cattaraugus and Chautauqua.

State Law, § 120, as added by L. 1917, ch. 798.

**Apportionment of members of assembly.** The number of members of assembly of this state hereafter to be chosen in the several counties thereof shall be as follows:

- In the county of Albany, three.
- In the county of Allegany, one.
- In the county of Bronx, eight.
- In the county of Broome, two.
- In the county of Cattaraugus, one.
- In the county of Cayuga, one.
- In the county of Chautauqua, two.
- In the county of Chemung, one.
- In the county of Chenango, one.
- In the county of Clinton, one.
- In the county of Columbia, one.
- In the county of Cortland, one.
- In the county of Delaware, one.
- In the county of Dutchess, two.
- In the county of Erie, eight.
- In the county of Essex, one.
- In the county of Franklin, one.
- In the county of Fulton-Hamilton, one.
- In the county of Genesee, one.
- In the county of Greene, one.
- In the county of Herkimer, one.
- In the county of Jefferson, one.
- In the county of Kings, twenty-three.
- In the county of Lewis, one.
- In the county of Livingston, one.
- In the county of Madison, one.
- In the county of Monroe, five.
- In the county of Montgomery, one.
- In the county of Nassau, two.
- In the county of New York, twenty-three.
- In the county of Niagara, two.
- In the county of Oneida, three.
- In the county of Onondaga, three.

- In the county of Ontario, one.
- / In the county of Orange, two.
- In the county of Orleans, one.
- In the county of Oswego, one.
- In the county of Otsego, one.
- In the county of Putnam, one.
- In the county of Queens, six.
- In the county of Rensselaer, two.
- In the county of Richmond, two.
- In the county of Rockland, one.
- In the county of Saint Lawrence, two.
- In the county of Saratoga, one.
- In the county of Schenectady, two.
- In the county of Schoharie, one.
- In the county of Schuyler, one.
- In the county of Seneca, one.
- In the county of Steuben, two.
- In the county of Suffolk, two.
- In the county of Sullivan, one.
- In the county of Tioga, one.
- In the county of Tompkins, one.
- In the county of Ulster, one.
- In the county of Warren, one.
- In the county of Washington, one.
- In the county of Wayne, one.
- In the county of Westchester, five.
- In the county of Wyoming, one.
- In the county of Yates, one.

State Law, § 121, as added by L. 1917, ch. 798.

Assembly districts. The supervisors of each of the aforesaid counties, which are by the provisions of this article entitled to more than one member of assembly, shall meet on the second Tuesday in June, nineteen hundred and seventeen, at the place where their last meeting were held; they shall organize by appointing one of their number as chairman, and another as secretary, and shall proceed to divide their respective counties into so many assembly districts as they are entitled respectively to members of assembly under this article; and shall thereupon make their certificates respectively, containing a description of each assembly district, specifying the number of each district and the population thereof according to the last state enumeration.

In any city comprising one or more counties, in which there is no board of supervisors, the members of the board of aldermen of said city shall constitute the board for the division of the counties in such city into assembly districts, and they shall meet at the same time and in the same manner organize, make such divisions in said counties and certificates, as boards of supervisors in other counties are required to do.

The said certificate shall be signed by a majority of such supervisors respectively, except in cities in which there is no board of supervisors and in such cities by a majority of the aldermen of said cities, and they shall cause duplicate certificates to be filed in the office of the secretary of state and the office of the clerk of their respective counties.

State Law, § 122, as added by L. 1917, ch. 798.



## ENUMERATION OF THE INHABITANTS OF THE STATE.

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### **When enumeration shall be taken.**

An enumeration of the inhabitants of this state shall be taken during the months of May and June in the year nineteen hundred and fifteen, and in said months every tenth year thereafter.

State Law, § 140.

### **General powers and duties of the secretary of state.**

The enumeration herein authorized and required shall be taken under the general direction and supervision of the secretary of state. He may designate a deputy or a clerk in his office to take charge of such enumeration. He may in his discretion and without examination appoint temporarily such additional clerks and assistants as in his opinion are actually necessary to properly perform the duties imposed upon him by this article, and remove them at pleasure and may fix their compensation, provided that the total amount paid therefor shall not exceed the amount appropriated and available for such purpose. The persons so appointed as such additional clerks and assistants shall be qualified to the satisfaction of the secretary of state to perform the duties required of them. The secretary of state shall:

1. **Regulations.** Adopt, and cause to be printed and distributed to chief enumeration supervisors and enumerators, regulations, not inconsistent with the provisions of this article, specifying in detail the methods to be followed in taking such enumeration, prescribing the duties of chief enumeration supervisors and enumeration supervisors and enumerators, and the manner of making and transmitting returns by such officers, and providing generally for the proper enforcement and the economical administration and carrying into effect of the provisions of this article.

2. **Blanks and forms.** Prepare and cause to be printed and forwarded to the enumeration supervisors such number of blank schedules, returns, cards, abstracts and other forms as may be required for the use of such supervisors and the enumerators in properly and accurately taking, completing and transmitting the enumeration herein authorized.

3. **Instructions.** Prepare and transmit to such supervisors and enumerators printed instructions and copies of this article for the information of such supervisors and the enumerators. Such instructions shall clearly and explicitly state the general principles to be applied in determining what constitutes citizenship and shall especially inform such supervisors and enumerators as to their duties relating to the enumeration of citizens and aliens.

4. Returns; tabulations. Prescribe the contents of returns and direct the manner and time of making and transmitting such returns by supervisors and enumerators, and cause such returns to be tabulated and arranged so as to show the number of inhabitants exclusive of aliens, the number of aliens, and the total number of inhabitants in each village, town, county, city and borough of a city, of the state. He may, if he deems it advisable, cause such tabulation to be made of the inhabitants of other political subdivisions, or districts of the state and may provide for an enumeration of the inhabitants thereof for such purpose. In any city in a county containing more than one senate district, or which, in the opinion of the secretary of state, may be entitled to more than one senate district under a reapportionment, such tabulation shall show the result of such enumeration in such city, by blocks inclosed by streets or public ways. He may, in his discretion, direct the chief enumeration supervisors and enumeration supervisors to tabulate and arrange the returns submitted to them by the enumerators of their districts. He may also, if he deems it advisable, contract with any person for the tabulation of such returns.

5. Report of enumeration. Prepare and report to the legislature, on or before the fifteenth day of January next following such enumeration, a full and complete report of the result of such enumeration, tabulated and arranged as above provided.

6. Filing of report. Transmit, within ten days after the final completion of the enumeration, to the county clerk of each county to which such returns relate a certified copy of the portions of such report which relate to such county to be filed and become a record of such county clerk's office.

State Law, § 141, as amended by L. 1915, ch. 155, in effect March 31, 1915.

#### Appointment of chief enumeration supervisors and enumeration supervisors.

The secretary of state shall appoint without examination, during the month of April, nineteen hundred and fifteen, and in such month in every tenth year thereafter, an enumeration supervisor for each assembly district of the state. He shall also appoint without examination, at such time one chief enumeration supervisor for the counties of New York and the Bronx, one for the counties of Kings and Queens, and one for the county of Erie. Each person so appointed shall be a citizen of the United States, a qualified voter of the district for which he is appointed and shall have resided in such district for a period of at least one year previous to his appointment. Such chief enumeration supervisor and enumeration supervisor shall take office immediately upon their appointment and shall hold office until the duties required of them by this act shall have been performed, unless sooner removed by the secretary of state. The secretary of state shall issue and deliver to such chief enumeration supervisor and enumeration supervisor a certificate of appointment, which shall be signed by him, and shall state and accurately describe the boundaries of the assembly district to which such supervisor is assigned. Such chief enumeration supervisor and enumeration supervisor shall each immediately upon receiving such certificate and before entering upon the duties of his office take and subscribe and file in the office of the secretary of state an oath

of office in the form to be prescribed by the secretary of state, to the effect that he will perform the duties of his office to the best of his ability, that he will report to the secretary of state all inaccurate enumerations coming to his knowledge, and the incompetency of enumerators in his supervisory district, and that he will not intentionally increase, suppress or diminish the number of inhabitants enumerated by the enumerators under his supervision or in any way fraudulently or illegally alter the enumeration of the inhabitants of his district or the return and tabulation thereof made as provided in this act.

The chief enumeration supervisors appointed as herein provided shall be responsible for the proper enumeration of the inhabitants of the counties for which they were appointed, and shall possess the powers and perform the duties prescribed by the secretary of state.

State Law, § 142, as amended by L. 1915, ch. 155, in effect March 31, 1915.

#### Compensation of enumeration supervisors.

Each enumeration supervisor shall be paid a compensation of five hundred dollars. The chief enumeration supervisor for the counties of New York and the Bronx, and such chief for the counties of Kings and Queens shall each be paid a compensation of two thousand and five hundred dollars, and such chief enumeration supervisor for the county of Erie shall be paid a compensation of two thousand dollars. Such compensation shall be paid in three equal instalments by the state treasurer out of appropriations made therefor on the warrant of the comptroller drawn upon the requisition of the secretary of state. The last instalment of such compensation shall not be paid until the work required to be performed by such supervisor, under the provisions of this article and the regulations of the secretary of state shall have been completed to the satisfaction of the secretary of state. If a chief enumeration supervisor or an enumeration supervisor be removed by the secretary of state, and the services performed by such supervisor were not satisfactory to the secretary of state, and the compensation therefor has not been fully paid, the secretary of state may reduce the compensation to be paid for such services.

State Law, § 143, as amended by L. 1915, ch. 155, in effect March 31, 1915.

#### Powers and duties of enumeration supervisors.

Each enumeration supervisor shall, subject to the regulations prescribed by the secretary of state and under his control and direction:

1. Supervise the taking of the enumeration by the enumerators appointed as herein provided and see to it that the provisions of this article and the regulations of the secretary of state are fully complied with and carried into effect.

2. Aid and advise enumerators in the performance of their duties, instruct them relative thereto and give them such information as they may require.

3. Report to the secretary of state as to the incompetency, misconduct and inaccuracies of enumerators, and make such recommendations in respect to such enumerators as he may deem advisable.

4. Distribute among the enumerators in his district blanks, schedules and returns, together with such other cards, instructions and other material as may be forwarded to him by the secretary of state for such purpose.

5. Receive and safely keep the returns of the enumerators and transmit them to the secretary of state at such times and in such manner as may be required by him, and tabulate and arrange such returns if required to do so by the secretary of state.

6. Have power to take affidavits of, and administer oaths to, enumerators and all other persons, pertaining to any matter coming within his jurisdiction or in any way relating to the enumeration herein authorized.

7. Perform such other duties relative to such enumeration as may be prescribed by the regulations of the secretary of state, or as may be required of him by the said secretary of state.

8. Examine the enumerators appointed for the several enumeration districts in his supervisory district for the purpose of ascertaining their qualifications to perform the duties required of them and investigate as to the character of such enumerators and require each of them before beginning his work to present to him at least two certificates of good moral character, signed by reputable residents of the supervisory district in which such enumerator is to serve; he shall report the result of such examination and investigation to the secretary of state.

State Law, § 144, as amended by L. 1915, ch. 155, in effect March 31, 1915.

#### Enumeration districts.

The secretary of state, in the month of April, nineteen hundred and fifteen, and during such month in every tenth year thereafter, shall cause each assembly district to be divided into enumeration districts consisting of one or more election districts as such districts were constituted on the day of the general election in the preceding year. But whenever in any city there is a county having more than one senate district, or which in the opinion of the secretary of state may under a new apportionment be entitled to more than one senate district, the enumeration districts in such city shall consist of blocks, inclosed by streets or public ways.

The county clerk, board of elections, commissioner of elections or other officer whose duty it is under the election law to provide maps or furnish certificates showing the boundaries of election districts or perform other duties relative to such districts, shall, upon the request of the secretary of state, furnish and transmit such maps and certificates.

State Law, § 145, as amended by L. 1915, ch. 155, in effect March 31, 1915.

#### Appointment and qualifications of enumerators.

The secretary of state shall, in the month of April, nineteen hundred and fifteen, and during such month in every tenth year thereafter, appoint and may at pleasure remove an enumerator for each enumeration district created as provided in this article. Such appointment may be made by the secretary

of state in his discretion, without examination, from lists of persons found by him to be qualified. Each person appointed as an enumerator shall be a citizen of the United States and of the state of New York and shall have been a resident of the district for which he is appointed for at least one year at the time of such appointment. If no person qualified to serve as an enumerator and willing to undertake the duties thereof resides in such district the secretary of state may appoint a person, who has shown the qualifications and fitness to hold such position as above provided, to act as an enumerator without regard to his residence.

The secretary of state shall issue to each enumerator a certificate of appointment under his hand in which certificate the district assigned to such enumerator shall be designated. He shall transmit with such certificate a description of the boundaries of the district within which the duties of the enumerator are to be performed. Such certificate shall be delivered to the person appointed and shall be evidence of the facts therein contained and of his authority to act under the provisions of this act. Such certificates together with the description of the boundaries of enumeration districts may be delivered to the enumeration supervisor who shall deliver the same to the enumerators of the districts within the assembly district for which such supervisor is appointed.

State Law, § 146, as amended by L. 1915, ch. 155, in effect March 31, 1915.

#### Compensation of enumerators.

The compensation of enumerators shall be two dollars per day for each day actually and necessarily employed in making the enumeration and preparing duplicate copy of the returns, and one cent for each person enumerated in the return, provided, however, that in towns in counties included within the forest preserve, having less than one thousand inhabitants as shown by the last preceding census of the United States, the secretary of state may allow two cents for each person enumerated in the return. Such compensation shall be paid upon a verified account therefor rendered to the secretary of state, and approved by him and filed with the state comptroller, who shall draw his warrant upon the state treasurer therefor to be paid by the state treasurer from the funds as may be applicable thereto. The secretary of state may reduce or reject claims for compensation which in his judgment are excessive, unearned, illegal or unauthorized.

State Law, § 147, as amended by L. 1915, ch. 155, in effect March 31, 1915.

#### Interpreters.

The secretary of state may authorize and direct enumeration supervisors to employ interpreters to assist enumerators in their respective enumeration districts in the enumeration of persons not speaking the English language. The qualifications of persons to act as such interpreters shall be ascertained by persons designated by the secretary of state. The compensation of such persons shall be fixed by the secretary of state. The compensation of such

Interpreters shall be fixed by the secretary of state in advance, and shall not exceed three dollars per day for each day actually and necessarily employed.

State Law, § 148, as amended by L. 1916, ch. 186, in effect March 31, 1918.

**Oaths of enumerators and interpreters.**

Every enumerator or interpreter before entering upon his duties under the provisions of this article shall take and subscribe the following oath or affirmation before any officer authorized to administer oaths, who shall certify such attestation without charging any fee therefor: ..... being duly sworn, says that he is more than twenty-one years of age; that he is a citizen of the United States and of the state of New York; that he is now and has been a resident of ..... enumeration district (as the case may be; or if appointed outside of the block or district, give residence) of the ..... in the county of ..... state of New York for one year last past; that he has been duly appointed as the ..... of said district for the purpose of taking an enumeration of the inhabitants of said district under the provisions of the law providing for the taking of a state enumeration of the state of New York during the year .....; and that he will perform the duties of ..... to the best of his ability; that the list of inhabitants so taken and enumerated by him together with their residence by street or avenue and the number thereof shall in all respects be a true and correct list of all the inhabitants of said election district or block; that he will in all cases, to the best of his ability correctly state in such list, which of the inhabitants, if any, set forth therein are aliens; that he will not intentionally increase, suppress or diminish the number of inhabitants of such election district numerically or otherwise for any purpose whatever in taking, making and completing such enumeration.

State Law, § 149, as amended by L. 1916, ch. 186, in effect March 31, 1918.

**Failure of enumeration supervisors and enumerators to perform duties.**

In the case of the inability or neglect of any chief enumeration supervisor, enumeration supervisor or enumerator appointed under or by virtue of this article to perform his duties as required, the secretary of state shall have full power, and it shall be his duty forthwith, to remove such enumeration supervisor or enumerator and in the manner aforesaid, to appoint an enumeration supervisor or enumerator to perform such service, and the secretary of state shall have full authority to confirm the accuracy of the enumeration of any district by such comparisons and investigations as a true enumeration demands.

State Law, § 150, as amended by L. 1916, ch. 186, in effect March 31, 1918.

**Removal of supervisors and enumerators and filling vacancies; amendment of enumerations.**

The secretary of state may remove any chief enumeration supervisor, enumeration supervisor or enumerator and fill the vacancy thus caused



or otherwise occurring whenever it shall appear that any portion of the enumeration provided for in this article has been negligently or improperly taken, and is by reason thereof incomplete or erroneous, and such enumerator shall forfeit all claim to compensation. Such vacancy shall be filled by the secretary of state in the same manner as an original appointment is made. The secretary of state may also cause such incomplete, erroneous, inaccurate and unsatisfactory enumeration to be amended or made anew under such methods as may, in his discretion, be practicable.

State Law, § 151, as amended by L. 1915, ch. 155, in effect March 31, 1916.

#### Enumeration of Indians.

It shall be the duty of the secretary of state to appoint suitable persons to take the enumeration of the Indians residing on the several reservations in this state, who shall, in respect to such reservations, perform all the duties required of an enumerator by this article, and as the secretary of state in his instructions shall prescribe, for which service they shall be paid as other enumerators are compensated.

State Law, § 152, as amended by L. 1915, ch. 155, in effect March 31, 1916.

#### Commencement of enumeration; how enumeration made.

On such day in the month of May or June, as the secretary of state shall direct, each enumeration supervisor shall cause the enumerator within his district to enumerate truly and accurately the inhabitants residing in the enumeration district for which he shall have been appointed, and to ascertain the facts and statistics required by the population schedule or return. It shall be the duty of each enumerator to visit personally each dwelling-house in his district and each family therein and each individual living out of a family in any place of abode, and by inquiry made of the head of each family or of a member or members thereof deemed credible and worthy of trust, or of such individual living out of a family, to obtain each and every item of information and all particulars required by this article and the regulations of the secretary of state as of such date in May or June as so directed by the secretary of state. And in case no person shall be found at the usual place of abode of such family or individual living out of a family competent to answer the inquiries made in compliance with the requirements of this article, it shall be lawful for the enumerator to obtain the required information from the family or families or person or persons living nearest to such place of abode. Every person whose usual place of abode shall be in any family on such date so prescribed by the secretary of state, shall be returned as of such family; and every inhabitant casually absent at the time of taking the enumeration shall be returned as belonging to that place in which he usually resides. Before the members of a family or inhabitants who are absent at the time of taking the enumeration are entered or returned as residents of the enumeration district, blank statements shall be forwarded to the head of such family or such inhabitant, at the place where such family or inhabitant is sojourning which

shall be immediately returned to the enumerator properly filled out and signed by the head of such family or by such inhabitant. Such statements shall give the names of the members of such families or inhabitants, the place where they are sojourning, when they are expected to return, and shall state whether or not they are residents of the enumeration district wherein their place of abode is situated and whether or not they are citizens of the state. If such statement is not returned to the enumerator as above provided within a reasonable time, the names of the members of such family or inhabitants who are absent, shall not be returned by the enumerator as residents of his district, unless an affidavit of some person known to the enumerator to be possessed of sufficient knowledge as to the said absent family or inhabitants be presented to such enumerator containing satisfactory information showing that the members of such absent family or such absent inhabitants are residents of such district and citizens of the state. If the place of abode of such absent family or inhabitant is in a building, containing two or more apartments occupied by separate families, the enumerator shall inquire of the owner, agent or manager of such building as to the residence, citizenship or alienage of such absent family or inhabitant. Such statements and affidavits shall be transmitted by the enumerator at the time of making his return to the enumeration supervisor. The return of the enumerator shall state the place where such absent inhabitant is sojourning, when he is expected to return and the occasion for his absence.

It shall be the duty of each enumerator to complete the enumeration and all his official work and forward before July first, or on such earlier date as the secretary of state may direct, in duplicate by express or as otherwise directed carefully inclosed, so as to protect the returns transmitted, the original schedules or returns, duly certified to the enumeration supervisor of the assembly district in which his district is located stating the number of pages of which said returns consist. In making such enumeration he shall for the purpose of identification ascertain and include the sex, age, color, nativity, citizenship or alienage, and the occupation of each inhabitant, with his residence by street and number, if any, or if there is no street and number, then such description as shall identify the place of residence. Such enumerator shall specially ascertain and note as to the citizenship of all foreign born inhabitants, and if they are naturalized shall require them to exhibit their naturalization papers. The names of children of naturalized citizens and of aliens shall be specially noted and the schedules, blanks and cards shall be so prepared as to permit facts as to citizenship and alienage to be carefully and clearly noted. In any city, in a county having more than one senate district, or which in the opinion of the secretary of state may under a new apportionment be entitled to more than one senate district, the enumeration shall be taken by blocks inclosed by streets or public ways, as well as by street and number. The enumeration supervisor shall at all times advise and instruct such enumerators as to such enumeration and shall examine all returns, schedules and cards transmitted to him by the enumerators under his supervision, and in the event of discrepancies or omissions being discovered in said returns, schedules and cards he shall use all diligence in causing the same to

be corrected. In case the district assigned to any enumerator shall embrace all or any part of any incorporated borough, city or village, and also other territory not included within the limits of such incorporated borough, city or village, or either, it shall be the duty of the enumerator of such district to clearly and plainly distinguish and separate upon the population schedules or returns, the inhabitants of all or any part of such borough, city or village, as may be embraced in the district assigned to such enumerator from the inhabitants of the territory not included therein.

State Law, § 153, as amended by L. 1915, ch. 155, in effect March 31, 1916.

**Penalty for withholding information or giving false information.**

Any person being the head of a family or member thereof of the age of twenty-one years, who shall refuse to give to the duly appointed enumerator or interpreter of the district wherein the person resides the information required by him relative to any of the particulars which such enumerator or interpreter is required to secure under the provisions of this article concerning such family or person, or who shall wilfully give false information to such enumerator concerning the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and not less than fifty dollars.

State Law, § 154, as amended by L. 1915, ch. 155, in effect March 31, 1916.

**Penalty for enumeration supervisor, enumerator or interpreter making false enumeration.**

Any enumerator or interpreter who shall wilfully omit, suppress, increase or diminish the number of inhabitants embraced within his district from or on his enumerated list, schedule or return, or any enumeration supervisor who shall wilfully alter such list, schedule or return to suppress, increase or diminish the number of inhabitants as shown on such list, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit all compensation as an enumeration supervisor, enumerator or interpreter, and shall be sentenced to confinement in a penitentiary or jail for not more than three months.

State Law, § 155, as amended by L. 1915, ch. 155, in effect March 31, 1916.

**Completion of enumeration; penalty for failure to make return.**

If any enumerator shall neglect for three days after the thirtieth day of June, nineteen hundred and fifteen, and in every tenth year thereafter, or for three days after having been directed so to do, to make his return as aforesaid, the enumeration supervisor shall immediately proceed himself to procure such return and duplicate, and the expenses thereof shall be deducted from the account of such enumerator upon the voucher presented by the secretary of state to the state comptroller for the payment of services. The secretary of state is authorized to require that the enumeration of the inhabitants of any district shall be completed within two weeks from the date fixed by him for commencing the enumeration in each of said years.

State Law, § 156, as amended by L. 1915, ch. 155, in effect March 31, 1916.

**Sheriffs and other officers to assist enumerators.**

In all counties of this state the sheriff, mayor or police commissioner of the city, or other officers having the control and direction of the police or other peace officers, shall render, and cause the police or other peace officers to render assistance and aid to the enumeration supervisor and enumerators appointed under this article when so requested to do by the secretary of state or enumeration supervisor and upon like request shall cause police officers or other peace officers to accompany such enumerators to any house or houses, place or premises for the purpose of rendering such aid and assistance.

State Law, § 157, as amended by L. 1915, ch. 155, in effect March 21, 1915.

**Certificate of secretary of state conclusive evidence.**

A certificate under the hand and seal of the secretary of state as to the number of inhabitants of this state, or of any county, town, city or village, borough or district thereof, as shown by the completed and approved enumeration taken under the provisions of this article, shall be received as conclusive evidence of the fact by each and every court of this state.

State Law, § 158, as amended by L. 1915, ch. 155, in effect March 21, 1915.

## JUDICIAL DISTRICTS.

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### **Division of state into judicial districts.**

The state is hereby divided into nine judicial districts, pursuant to the provisions of the first section of the sixth article of the constitution, which districts shall be arranged as follows:

The first judicial district shall consist of the county of New York as at present constituted, including therein, as a part thereof, all the territory, which was or purported to be annexed to the county of New York from the county of Westchester by chapter nine hundred and thirty-four of the laws of eighteen hundred and ninety-five;

The second judicial district shall consist of the counties of Richmond, Kings, Queens, Nassau and Suffolk;

The third judicial district shall consist of the counties of Columbia, Sullivan, Ulster, Greene, Albany, Schoharie and Rensselaer;

The fourth judicial district shall consist of the counties of Warren, Saratoga, Washington, Essex, Franklin, Saint Lawrence, Clinton, Montgomery, Hamilton, Fulton and Schenectady;

The fifth judicial district shall consist of the counties of Onondaga, Oneida, Oswego, Herkimer, Jefferson and Lewis;

The sixth judicial district shall consist of the counties of Otsego, Delaware, Madison, Chenango, Broome, Tioga, Chemung, Tompkins, Cortland and Schuyler;

The seventh judicial district shall consist of the counties of Livingston, Wayne, Seneca, Yates, Ontario, Steuben, Monroe and Cayuga;

The eighth judicial district shall consist of the counties of Erie, Chautauque, Cattaraugus, Orleans, Niagara, Genesee, Allegany and Wyoming;

The ninth judicial district shall consist of the counties of Westchester, Putnam, Dutchess, Orange and Rockland.

Judiciary Law, § 140.

**AN ACT TO PROVIDE A PROCEDURE FOR THE PROMPT REVIEW  
OF AN APPORTIONMENT BY THE LEGISLATURE OR OTHER  
BODY.**

(Laws of 1911, chapter 773, in effect July 25, 1911.)

Section 1. An apportionment by the legislature shall be subject to review by the supreme court at the suit of any citizen, upon the petition of any citizen to the supreme court where any such petitioner resides and upon such service thereof upon the attorney-general, the president of the senate, the speaker of the assembly and the governor, as a justice of the supreme court may direct.

§ 2. An apportionment by any other body shall be subject to review by the supreme court at the suit of any citizen, upon the petition of any citizen to the supreme court where any such petitioner resides, and upon such service thereof upon the presiding officer of such other body, or upon such members thereof, and upon the attorney-general, as a justice of the supreme court may direct.

§ 3. Any such petition shall pray that the constitutionality of the apportionment be reviewed, and for such other relief as may be proper. The court may enter an order directing any officer of the state charged with the duty of issuing notices of election to issue notices of any ensuing election in accordance with its determination.

§ 4. In any proceeding heretofore begun, in the manner provided in the foregoing sections hereof, an appeal may, within ten days after the passage of this act, be taken to the appellate division of the supreme court from any determination heretofore made as to the constitutionality of any apportionment by the supreme court, and on any appeal to the appellate division in such proceeding the appellate division shall have jurisdiction to review the constitutionality of the apportionment in issue, and to issue an order in accordance with section three hereof; and from the determination of the appellate division on such appeal an appeal may be taken to the court of appeals, and on any appeal to the court of appeals in such proceeding the court of appeals shall have jurisdiction to review the constitutionality of the apportionment in issue and to issue an order in accordance with section three hereof.

§ 5. No limitation of the time for commencing an action shall affect any proceeding hereinbefore mentioned, or any appeal in any existing action or proceeding in which the validity of an apportionment is or may be in issue, if commenced within the period during which such apportionment is in force; and nothing in this act shall impair any existing remedy by which the validity of an apportionment may be determined.

§ 6. This act shall take effect immediately.





## **PART 5.**

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**PROVISIONS OF PENAL LAW, ETC.,**

**RELATING TO**

# **Crimes Against Elective Franchise**



# PENAL LAW\*

## PROVISIONS OF PENAL LAW,\* ETC.,

### RELATING TO

## CRIMES AGAINST ELECTIVE FRANCHISE

### **Definitions.**

The words "election" or "town meeting," as used in any of the sections of this article excepting section seven hundred and fifty-one, shall be deemed to apply to and include all general and special elections, municipal elections, town meetings, and primary elections and conventions, and proceedings for the nomination of candidates by petition under the election law. The word "candidate," as used in said sections, shall be deemed to apply to candidates for nomination at a primary election or convention, and candidates for any office to be voted for under the election law, as well as candidates for nomination by petition under the election law.

Penal Law, § 750, as amended by L. 1910, ch. 430, in effect June 8, 1910.

**Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions.**

Any person who:

1. At a political caucus, or at a primary election of a party, wilfully votes, or attempts to vote, without being entitled to do so, or votes, or attempts to vote on any other name than his own, or on the same day more than once on his own name; or,

2. Votes, or offers to vote, at a political caucus, or primary election of a party, having voted at the political caucus or primary election of any other political party on the same day, or being at the time enrolled in a party other than the party at whose primary he votes or offers to vote; or, who causes his name to be placed upon the rolls of a party organization of one party while his name is by his consent or procurement upon the rolls of a party organization of another party; or,

3. At a political caucus, or at a primary election, for the purpose of affecting the result thereof, votes or attempts to vote two or more ballots, or adds, or attempts to add, any ballot to those lawfully cast, by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or who adds to or mixes with, or attempts to add to or mix with, the ballots lawfully cast, another ballot or other ballots before the votes have been counted or canvassed, or while the votes are being counted or canvassed; or at any time abstracts any ballots lawfully cast, with intent to change the result of such election or to change the count thereat in favor of or against any person voted for at such election, or to prevent the ballots

\* For annotations to these provisions, see Gilbert's Criminal Law and Procedure; Bender's Penal Law and Criminal Code.

being recounted or used as evidence; or carries away, destroys, loses, conceals, detains, secretes, mutilates, or attempts to carry away, destroy, conceal, detain, secrete, or mutilate, any tally lists, ballots, ballot boxes, enrollment books, certificates of return, or any official documents provided for by the election law or otherwise by law, for the purpose of affecting or invalidating the result of such election, or of destroying evidence; or in any manner interferes with the officers holding any primary election or conducting the canvass of the votes cast thereat, or with voters lawfully exercising, or seeking to exercise, their right of voting at such primary election; or,

4. For the purpose of securing enrollment as a member of a political party, or for the purpose of being allowed to vote at a primary election as a member of a political party, makes and deposits or files, or makes or deposits or files with a board of primary inspectors, or with any public officer or board, a false declaration of party affiliation or wilfully makes a false declaration of residence, either by an enrollment blank or otherwise, or falsely answers any pertinent question asked him by the board of primary inspectors, or the board of election inspectors, or by a member thereof; or knowingly, on any day of registration or in the interval between any such day and the next ensuing day of general election, reveals or discloses the names or number of the enrolled electors of any party, or makes, publishes, or circulates a list of such names, or of any thereof, or does or permits any act by which the name of the party with which an elector has enrolled, or the number of electors enrolled with a party, may be disclosed; or,

5. Fraudulently or wrongfully does any act tending to affect the result of any election at a political caucus or of any primary election or convention; or,

6. Induces or attempts to induce any officer, teller, canvasser, poll clerk, primary election inspector, election inspector, custodian of primary records, or clerk or employee of or in the office of a custodian of primary records at a political caucus, or primary election, or convention, or while discharging any duty or performing any act required or made necessary by the election law, to do any act in violation of his duty, or in violation of the election law; or,

7. Directly or indirectly, by himself or through any other person, pays, or offers to pay, money or other valuable thing, or promises a place or position, or offers any other consideration or makes any other promise, to any person, to induce any voter to vote, or refrain from voting, at a political caucus, primary election, or convention, for or against any particular person; or does or offers to do, anything to hinder or delay any elector from taking part in, or voting at, a political caucus, or at a primary election; or,

8. By menace or other unlawful or corrupt means, directly or indirectly, influences or attempts to influence, the vote of any person entitled to vote at a political caucus, primary election, or convention, or obstructs such person in voting, or prevents him from voting thereat; or,

9. Directly or indirectly, by himself or through any other person, receives money or other valuable thing, or a promise of a place or position, before, at, or after any political caucus, primary election, or convention, for voting or refraining from voting for or against any person, or for voting or refraining from voting at a political caucus, primary election, or convention; or,

10. Being an officer, teller, canvasser, primary inspector, at a political caucus, or at a primary election, knowingly permits any fraudulent vote to be cast, or knowingly receives and deposits in the ballot box any ballots offered by any person not qualified to vote; or permits the removal of ballots from

the polling place before the close of the polls, or refuses to receive ballots intended for the electors of the district, or refuses to deliver to any elector ballots intended for the electors of the district which have been delivered to the board of inspectors, or permits electioneering within the polling place or within one hundred feet therefrom, or fails to keep order within the polling place, or permits any person other than the inspectors to accompany an elector into a voting booth, or enters the voting booth with any elector, except one entitled to receive assistance in the preparation of his ballot, or permits any person other than a voter, who has not voted, or watcher to come within the guard rail or removes or permits another to remove any mark placed upon a ballot for its identification; or,

11. Being an officer, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, election inspector, primary inspector, or poll clerk, knowingly puts opposite the name of an elector in an enrollment book any enrollment number other than the number opposite such name on the registration books of such district, or knowingly delivers to or receives from any elector on any day of registration an enrollment blank or envelope on which is any other enrollment number than that so opposite his name on such books of registration, or knowingly transcribes from an enrollment blank to the enrollment books any refusal to enroll or enrollment not indicated on the enrollment blank of the elector of such district whose enrollment number appears on the same, or refuses or wilfully neglects to transcribe from any enrollment blank to the proper enrollment books any refusal to enroll or enrollment indicated on the enrollment blank of such an elector, enrolls or attempts to enroll as a member of a political party, upon any of the enrollment books, any person not qualified to enroll as such, or fraudulently enters thereupon the name of any person who has not enrolled as a member of any political party, or refuses or wilfully neglects to enroll upon any of the enrollment books the name of any qualified person who has demanded to be enrolled as a member of a political party, or at any time strikes from any of the enrollment books the name of any person duly enrolled, or at any time adds to any of the enrollment books the name of any person not qualified to be enrolled as a member of a political party, or the name of any person who in fact has not enrolled as such; or makes marks upon, mutilates, carries away, conceals, alters, or destroys any enrollment blank or enrollment envelope used or deposited by an elector on a day of registration for the purpose of enrolling or refusing to enroll himself as a member of a political party; or mutilates, carries away, conceals, alters, or destroys, any statement or declaration made by a qualified voter for the purpose of enrolling as a member of a party; or, prior to the close of the last meeting for registration in any year, mutilates, carries away, conceals, alters, or destroys any enrollment blanks or enrollment envelopes not then delivered to electors; or,

12. Being an officer, teller, canvassers, election inspector, primary inspector, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, or any officer of a political committee or a convention, wilfully omits, refuses or neglects to do any act required by the election law or otherwise by law, or violates any of the provisions of the election law, or makes or attempts to make any false canvass of the ballots cast at a political caucus, primary election, or convention, or a false statement of the result of a canvass of the ballots cast thereat; or,

13. Being a custodian of primary records, or an officer of a political com-



mittee, or of a convention, who is charged with, or assumes, the duty of making up the preliminary roll of any convention, wilfully includes in such roll the name of any person not certified to be elected thereto in accordance with the provisions of law, or who wilfully omits from such roll the name of any person who is so certified to be a delegate to such convention,

Is guilty of a misdemeanor.

Penal Law, § 761.

#### **False registration.**

Any person who:

1. Registers or attempts to register as an elector in more than one election district for the same election, or more than once in the same election district; or,

2. Registers or attempts to register as an elector knowing that he will not be a qualified voter in the district at the election for which such registration is made; or,

3. Registers or attempts to register as an elector under any other name than his own; or,

4. Knowingly gives a false residence within the election district when registering as an elector; or,

5. Knowingly permits, aids, assists, abets, procures, commands or advises another to commit any such act,

Is guilty of a felony, punishable by imprisonment in a state prison for not more than five years.

Penal Law, § 762, as amended by L. 1909, ch. 306.

#### **Misconduct of registry or election officers.**

Any member or clerk of a registry board or other election officer who wilfully refuses to accord to any duly accredited watcher or challenger or to any voter or candidate any right given him by the election law, or who wilfully violates any provision of the election law relative to the registration of electors or to the taking, recording, counting, canvassing, tallying or certifying of votes, or wilfully neglects or refuses to perform any duty imposed on him by law, or is guilty of any fraud in the execution of the duties of his office, or connives in any electoral fraud, or knowingly permits any such fraud to be practiced, is guilty of a felony, punishable by imprisonment for not more than three years, or by a fine of not more than three thousand dollars, or both.

Penal Law, § 763, as amended by L. 1919, ch. 415.

#### **Mutilation, destruction or loss of registry list.**

Any person who wilfully loses, alters, destroys or mutilates the list or register of voters in any election district, or a certified copy thereof, or removes from the place of registration the public copy of such registration, after the making of the same and before the closing of the polls of the election for which the same is made, is guilty of a misdemeanor.

Penal Law, § 764.

#### **Solicitation of money for newspaper support.**

Any person who solicits from a candidate for an elective office money or other property as a consideration for a newspaper or other publication supporting any candidate for an elective office, is guilty of a misdemeanor.

Penal Law, § 765.

#### **Misdemeanors concerning police commissioners or officers or members of any police force.**

Any person who, being a police commissioner or an officer or member of any police force in this state:

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or,

2. Appoints, promotes, transfers, retires or punishes an officer or member of the police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force, because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or,

3. Contributes any money, directly or indirectly to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee,

Is guilty of a misdemeanor.

Penal Law, §756.

#### **Failure of house-dweller to answer inquiries.**

Any person dwelling in a building in a city who wilfully refuses to truly answer any question or who shall give false answers to any questions asked by any elector of such city, between the first meeting of the boards of registry therein for any election and the closing of the polls at such election, relating to the residence and qualifications as a voter of any person dwelling in such building, or of any person who appears upon the list or registry of voters made by a board of registry as residing at such building, or who knowingly harbors or conceals any person who has falsely registered as a voter, or who shall rent any room or bed to any person to be used by such person for himself or any other person for the purpose of unlawfully registering or voting therefrom is guilty of a misdemeanor.

Penal Law, §767.

#### **Removal, mutilation or destruction of election booths, supplies, poll-lists or cards of instruction.**

Any person who:

1. During an election or town meeting, wilfully defaces or injures a voting booth or compartment, or wilfully removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments in pursuance of law; or,

2. Before the closing of the polls, wilfully defaces or destroys any list of candidates to be voted for at such election or town meeting, posted in accordance with the election law; or,

3. During an election or town meeting, wilfully removes or defaces the cards for the instruction of voters, posted in accordance with the election law,

Is guilty of a misdemeanor.

Penal Law, § 758.

#### **Refusal to permit employees to attend election.**

A person or corporation who refuses to an employee entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by

the election law, or subjects such employee to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

Penal Law, § 759

**Misconduct in relation to certificates of nomination and official ballots.**

A person who

1. Falsely makes or makes oath to or fraudulently defaces or destroys a certificate of nomination or any part thereof; or,
2. Fines or receives for filing a certificate of nomination, knowing that any part thereof was falsely made; or,
3. Supersedes a certificate of nomination which has been duly filed, or any part thereof; or,
4. Forges or falsely makes the official indorsement of any ballot; or,
5. Having charge of official ballots, destroys, conceals or suppresses them,

except as provided by law

Is punishable by imprisonment for not more than five years.

Penal Law, § 760

**Misconduct in relation to designation petitions.**

Any person who

1. Pays lends contributes or promises to pay, lend or contribute any money or other valuable consideration to or for any voter or to or for any other person, to induce such voter to sign a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election; or,
2. Gives, offers or promises any office place or employment or promises to procure or endeavor to procure any office place or employment to or for any voter, or to or for any person in order to induce such voter to sign a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election; or,
3. Receives, agrees or contracts for any money gift, loan or other valuable consideration office, place or employment for himself or any other person for signing a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election; or,
4. Pays or agrees to pay money or other valuable consideration, to any person for his services in canvassing for or otherwise procuring the signatures of voters to a petition for the designation of a candidate or candidates for party nomination or for election to a party position to be voted for at a primary election upon the basis of the number of names to such petition procured by such person, or at a fixed amount per name; or,
5. Represents to any person as an inducement for signing a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election, that the person soliciting such signature is to be compensated upon the basis of the number of names procured by such person, or at a fixed amount per name,

Is guilty of a misdemeanor.

Penal Law, Section 760 n.

**Failure to deliver official ballots.**

Any person who has undertaken to deliver official ballots to any city, town or village clerk, or inspector, as authorized by the election law, and neglects or refuses to do so, is guilty of a misdemeanor

Penal Law, § 761.

**Misconduct of election officers and watchers.**

Any election officer or watcher who.

1. Reveals to another person the name of any candidate for whom a voter has voted; or,
2. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted; or,
3. Places a mark upon a ballot, or does any other act by which one ballot can be distinguished from another, or can be identified; or,
4. Before the closing of the polls unfolds a ballot which a voter has prepared for voting,

Is guilty of a misdemeanor.

Penal Law, § 762.

**Violation of election law by public officer.**

A public officer who omits, refuses or neglects to perform any act required of him by the election law, or refuses to permit the doing of any act authorized thereby, is, if not otherwise provided by law, punishable by imprisonment for not more than three years, or by a fine of not more than three thousand dollars, or both.

Penal Law, § 763.

**Misdemeanor in relation to elections.**

Any person who:

1. Acts as an inspector of election, poll clerk or ballot clerk, without being able to read and write the English language, or without being otherwise qualified to hold such office; or,

2. Being an inspector of election, knowingly and willfully permits or suffers any person to vote who is not entitled to vote thereat; or,

3. Willfully and unlawfully obstructs, hinders or delays, or aids or assists in obstructing or delaying an elector on his way to a registration or polling place, or while he is attempting to register or vote; or, 1

4. Electioneers on election day within a polling place, or in any public street or in a building or room, unless such building or room has been maintained for such purpose for at least six months previous to said election day, or in any public manner within one hundred feet of a polling place; or displays any political poster or placard, except those lawfully provided, in or upon any building used for registration or election purposes during any day for registration or election, or,

5. Removes any official ballot from a polling place before the closing of the polls; or,

6. Unlawfully goes within the guard-rail of any polling place or unlawfully remains within such guard-rail after having been commanded to remove therefrom by any inspector of election; or,

7. Enters a voting booth with any voter or remains in a voting booth while it is occupied by any voter, or opens the door of a voting booth when the same is occupied by a voter, with the intent to watch such voter while engaged in the preparation of his ballot, except as authorized by the election law; or,

8. Being or claiming to be a voter, permits any other person to be in a voting booth with him while engaged in the preparation of his ballot, except as authorized by the election law, without openly protesting against and asking that such person be ejected; or,

9. Having lawfully entered a voting booth with a voter, requests, persuades or induces such voter to vote any particular ballot or for any particular candidate, or, directly or indirectly, reveals to another the name of any candidate voted for by such voter, or anything occurring within such voting booth; or,

10. Shows his ballot after it is prepared for voting, to any person so as to reveal the contents, or solicits a voter to show the same; or,

11. Places any mark upon his ballot, or does any other act in connection with his ballot with the intent that it may be identified as the one voted by him; or,

12. Places any mark upon, or does any other act in connection with, a ballot or paster ballot, with the intent that it may afterwards be identified as having been voted by any particular person; or,

13. Receives an official ballot from any person other than one of the ballot clerks having charge of the ballots; or,

14. Not being a ballot clerk, delivers an official ballot to a voter; or,

15. Not being an inspector of election, receives from any voter a ballot prepared for voting; or,

16. Fails to return to the ballot clerks, before leaving the polling place or going outside the guard-rail, each ballot not voted by him; or,

17. Willfully defaces, injures, mutilates, destroys or secretes any voting machine which belongs to any municipality for use at elections, and any person who commits or attempts to commit a fraud in the use of any such voting machine during an election; or,

18 Willfully disobeys any lawful command of the board of inspectors, or any member thereof,

Is guilty of a misdemeanor.

This section shall apply to general and special elections, municipal elections and town meetings, but nothing therein shall prevent any person from receiving or delivering an unofficial sample ballot, or from receiving, delivering and voting an unofficial ballot as authorized by the election law.

Penal Law, § 764.

#### **Illegal voting.**

Any person who:

1 Knowingly votes or offers or attempts to vote at any election, or town meeting, when not qualified, or,

2. Procures, aids, assists, counsels or advises any person to go or come into any town, ward or election district, for the purpose of voting at any election, or town meeting, knowing that such person is not qualified, or,

3 Votes or offers or attempts to vote at an election, or town meeting more than once, or votes or offers or attempts to vote at an election, or town meeting under any other name than his own; or votes or offers or attempts to vote at an election, or town meeting in an election district or from a place where he does not reside; or,

4 Procures, aids, assists, commands or advises another to vote or offer or attempt to vote at an election, or town meeting, knowing that such person is not qualified to vote thereat; or,

5. Being an inhabitant of another state or county, votes or offers or attempts to vote at an election, or town meeting in this state or permits, aids, assists, abets, procures, commands or advises another to commit or attempt any act named in this section.

Is guilty of felony, punishable by imprisonment in a state prison for not more than five years.

An offer or attempt under this section shall be deemed to be the doing of any act made necessary by the election law preliminary to the delivery of a ballot to an elector or the deposit of the ballot in the ballot box.

Penal Law, § 765.

#### **False returns.**

An inspector or poll clerk of an election or town meeting, who intentionally makes, or attempts to make, a false canvass of the ballots cast thereat, or any false statement of the result of a canvass, though not signed by a majority of the inspectors, or any person who induces or attempts to induce any such inspector or clerk so to do, is guilty of a felony.

Penal Law, § 766.

#### **Furnishing money or entertainment to induce attendance at polls.**

Any person who directly or indirectly by himself or through any other person in connection with or in respect of any election:

1 Gives or provides, or causes to be given or provided, or shall pay for wholly or in part, any meat, drink, tobacco, refreshment or provisions to or for any person, other than as part of the traveling expenses of candidates, political agents, committees and public speakers, or,

2. Pays, lends or contributes, or offers or promises to pay, lend or con-

tribute any money or other valuable consideration, for any other purpose than the following matters and services at their reasonable, bona fide and customary value is guilty of a misdemeanor: Rent of halls and compensation or speakers, music and fireworks for public meetings, and expenses of advertising the same, together with the usual and minor expenses incident thereto; the preparation, printing and publication of posters, lithographs, banners, notices and literary material; the compensation of agents to supervise and prepare articles and advertisements in the newspapers, to examine questions of public interest bearing on the election, and report on the same; the pay of newspapers for advertisements, pictures, reading matter and additional circulation, the preparation and circulation of circular letters, pamphlets and literature bearing on the election; rent of offices and club rooms, compensation of such clerks and agents as shall be required to manage the necessary and reasonable business of the election and of attorneys at law for actual legal services rendered in connection with the election; the preparation of lists of voters; payment of necessary personal expenses by a candidate; the reasonable traveling expenses of the committeemen, agents, clerks and speakers, postage, express, telegrams and telephones; the expenses of preparing, circulating and filing a petition for nomination; compensation of poll workers or watchers, and food for the same, and election officers, hiring of carriages for conveying electors to the polls not exceeding three carriages for each election district in a city and not exceeding six carriages in any other election district; and the actual necessary railroad traveling expenses for transportation of voters to and from their places of residence for the purpose of voting.

Penal Law, § 767.

#### **Giving consideration for franchise.**

Any person who directly or indirectly, by himself or through any other person:

1. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election for any particular person or persons, or for or against any particular proposition submitted to voters, or to induce such voter to come to the polls or remain away from the polls at such election, or to induce such voter or other person to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such voter or other person having voted or refrained from voting or having voted or refrained from voting for or against any particular person or for or against any proposition submitted to voters, or having come to the polls or remained away from the polls at such election, or having placed or caused to be placed or refrained from placing or causing to be placed his or any other name upon the registry of voters; or,

2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election, for or against any particular person or for or against any proposition submitted



to voters, or to induce any voter or other person to place or cause to be placed or refrain from placing or causing to be placed his or any other name upon a registry of voters, or,

3. Gives, offers or promises any office, place, employment or valuable thing as an inducement for any voter or other person to procure or aid in procuring either a large or a small vote, plurality or majority at any election district or other political division of the state, for a candidate or candidates to be voted for at an election; or to cause a larger or smaller vote, plurality or majority to be cast or given for any candidate or candidates in one such district or political division than in another; or,

4. Makes any gift, loan, promise, offer, procurement or agreement as aforesaid to, for or with any person to induce such person to procure or endeavor to procure the election of any person or the vote of any voter at any election, or,

5. Procures or engages or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement the election of any person, or the vote of any voter, at such election; or,

6. Advances or pays or causes to be paid, any money or other valuable thing, to or for the use of any other person with the intent that the same or any part thereof, shall be used in bribery at any election, or knowingly pays or causes to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part expended in bribery at any election,

Is guilty of a felony, punishable by imprisonment for not more than five years, and in addition forfeits any office to which he may have been elected at the election with reference to which such offense was committed, and becomes incapable of holding any public office under the constitution and laws of the state for a period of five years after such conviction.

Penal Law, § 768.

#### **Receiving consideration for franchise.**

Any person who, directly or indirectly, by himself or through any other person

1. Receives, agrees or contracts for, before or during an election, any money, gift, loan or other valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from registering as a voter, or for refraining or agreeing to refrain from registering as a voter, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or for refraining or agreeing to refrain from voting for or against any particular person or persons at any election, or for or against any proposition submitted to voters at such election; or,

2. Receives any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such an election, or having registered or refrained from registering as a voter, or on account of himself or any other person having voted or refrained from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election, or on account of himself or any other person having come to the polls or remained

away from the polls at such election, or having registered or refrained from registering as a voter, or on account of having induced any other person to vote or refrain from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election.

Is guilty of a felony, and in addition shall be excluded from the right of suffrage for five years after such conviction.

The county clerk of the county in which such person is convicted shall transmit a certified copy of the record of conviction to the clerk of each county of the state, within ten days thereafter, which copy shall be filed in his office by each of said clerks.

Penal Law, § 769.

#### **Testimony on prosecution.**

A person offending against any section of this article is a competent witness against another person so offending and may be compelled to attend and testify on any trial, hearing or proceeding or investigation in the same manner as any other person. The testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person testifying. Any such person testifying shall not thereafter be liable to indictment, prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

Penal Law, § 770.

#### **Bribery or intimidation of elector in military service of United States.**

Any person who, directly or indirectly, by bribery, menace or other corrupt means, controls or attempts to control an elector of this state enlisted in the military service of the United States, in the exercise of his rights under the election law, or annoys, injures or punishes him for the manner in which he exercises such right, is guilty of a misdemeanor for which he may be tried at any future time when he may be found within this state; and upon conviction thereof shall thereafter be ineligible to any office therein.

Penal Law, § 771.

#### **Duress and intimidation of voters.**

Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election or to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,

2. By abduction, duress or any forcible or fraudulent device or contrivance

whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or,

3. Being an employer pays his employees the salary or wages due in "pay envelopes," upon which there is written or printed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his employees are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

Is guilty of a misdemeanor, and if a corporation shall in addition forfeit its charter.

Penal Law, § 772.

#### **Conspiracy to promote or prevent election.**

Any two or more persons who conspire to promote or prevent the election of any person to a public office by the use of any means which are prohibited by law, shall be punishable by imprisonment for not more than one year, provided any act besides such agreement be done to effect the object thereof by one or more of the parties to such conspiracy.

Penal Law, § 773.

#### **Political assessments.**

Any person who:

1. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employee of the state or a political subdivision thereof, to pay or promise to pay any political assessment; or,

2. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly, gives, pays or hands over to any other such officer or employee any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employee to pay or contribute any money or other valuable thing for any such purpose or object, or,

3. Being such an officer or employee and having charge or control of any building, office or room occupied for any purpose of the state or of a political subdivision thereof, consents that any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or,

4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment or,

5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that

the same shall be sent or presented to or collected of any such officer or employee; or,

5. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of, any such officer or employee,  
Is guilty of a misdemeanor.

Penal Law, § 774.

#### **Corrupt use of position or authority.**

Any person who:

1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or,

2. Being a public officer or employee of the state or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employee, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employee, or on account of the vote or political action of such officer or employee; or,

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or,

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom,

Is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both.

Penal Law, § 775.

#### **Failure to file candidate's statement of expenses.**

Every candidate who is voted for at any public election held within this state shall, within ten days after such election, file as hereinafter provided an itemized statement showing, in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various person who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled

by the electors of the entire state, or any division or district thereof greater than a county, shall file their statements in the office of the secretary of state. The candidates for town, village and city offices, excepting in the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs, unless the county has a commissioner of elections in which case candidates shall file their statements in the office of such commissioner of elections.

Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor. A county clerk or commissioner of elections with whom a candidate's statement of expenses is filed shall, within twenty days after the election, file a certified copy thereof with the secretary of state.

Penal Law, § 776, as amended by L. 1910, ch. 439, in effect June 6, 1910.

#### **Procuring fraudulent certificates in order to vote.**

Any person who knowingly and wilfully procures from any court, judge, clerk or other officer, a certificate of naturalization, which has been allowed, issued, signed or sealed in violation of the laws of the United States or of this state, with intent to enable himself or any other person to vote at any election when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, is guilty of a felony.

Penal Law, § 777.

#### **Presenting fraudulent certificates to registry boards to procure registration.**

A person who knowingly and wilfully presents to any board of officers, for the purpose of having himself or any other person placed upon any list or registry of voters, or to any board of officers for the purpose of enabling himself or any other person to vote at any election, any certificate of naturalization which has been allowed or issued by or procured from any judicial officer, clerk of a court, or other ministerial officer of a court, by any false statement, oath or representation, or in violation of the laws of the United States or of this state, with intent to enable any person to vote at any election, when such person is not entitled by the laws of the United States to become a citizen, or of this state, to exercise the elective franchise, is guilty of a felony.

Penal Law, § 778.

#### **Soliciting from candidates.**

Any person who solicits from a candidate for an elective office money or other property, or who seeks to induce such candidate who has been placed in nomination to purchase any ticket, card or evidence of admission to any ball, picnic, fair or entertainment of any kind, is guilty of a misdemeanor; but this section shall not apply to a request for a contribution of money by an authorized representative of the political party, organization or association to which such candidate belongs.

Penal Law, § 779.

**Judicial candidates not to contribute.**

No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for a judicial office may make such legal expenditures other than contributions, as are authorized by section seven hundred and sixty-seven of this article.

Penal Law, § 780.

**Limitation of amounts to be expended by candidates.**

The total amount expended by a candidate for a public office, voted for at an election, by the qualified electors of the state or any political subdivision thereof, for any of the purposes specified in section seven hundred and sixty-seven of this chapter, for contributions to political committees, as that term is defined in section five hundred and forty of the election law, or for any purpose tending in any way, directly or indirectly, to promote, or aid in securing, his nomination and election shall not exceed the amount specified herein. By a candidate for governor, the sum of ten thousand dollars; by a candidate for any other elective state office, other than a judicial office, the sum of six thousand dollars; by a candidate for the office of representative in congress or presidential elector, the sum of four thousand dollars; by a candidate for the office of state senator, the sum of two thousand dollars; by a candidate for the office of member of assembly, the sum of one thousand dollars; by a candidate for any other public office to be voted for by the qualified electors of a county, city, town or village, or any part thereof, if the total number of votes cast therein for all candidates for the office of governor at the last preceding state election, shall be five thousand or less, the sum of five hundred dollars; if the total number of votes cast therein at such last preceding state election be in excess of five thousand, the sum of three dollars for each one hundred votes in excess of such number may be added to the amounts above specified. Any candidate for a public office who shall expend for the purposes above mentioned an amount in excess of the sum herein specified shall be guilty of a misdemeanor.

Penal Law, § 781.

**Penalty.**

Any person convicted of a misdemeanor under this article shall for a first offense be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this article for a second or subsequent offense shall be guilty of a felony.

Penal Law, § 782.

**Political contributions by corporations prohibited; penalty.**

No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for



political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stockholder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor and punishable by imprisonment in a penitentiary or county jail for not more than one year and a fine of not more than one thousand dollars. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

General Corporation Law, § 44.

**PART 6.**

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**PUBLIC OFFICERS LAW.**



# PUBLIC OFFICERS LAW.

(L. 1909, ch. 51.)

- Article 1.** Short title; definitions (§§ 1, 2).  
2. Appointment and qualification of public officers (§§ 3-16).  
3. Creation and filling of vacancies (§§ 30-42).  
4. Powers and duties of public officers (§§ 60-78).  
5. Delivery of public books (§ 80).  
6. Construction; laws repealed; when to take effect (§§ 90-92).

## ARTICLE 1.

### Short Title; Definitions.

- Section 1.** Short title.  
2. Definitions.

#### § 1. Short title.

This chapter shall be known as the "Public Officers Law."

#### § 2. Definitions.

The term "state officer" includes every officer for whom all the electors of the state are entitled to vote, members of the legislature, justices of the supreme court, regents of the university, and every officer, appointed by one or more state officers, or by the legislature, and authorized to exercise his official functions throughout the entire state, or without limitation to any political subdivision of the state, except United States senators, members of congress, and electors for president and vice-president of the United States. The term "local officer" includes every other officer who is elected by the electors of a portion only of the state, every officer of a political subdivision or municipal corporation of the state, and every officer limited in the execution of his official functions to a portion only of the state. The office of a state officer is a state office. The office of a local officer is a local office.

## ARTICLE 2.

### Appointment and Qualification of Public Officers.

- Section 3.** Qualifications for holding office.  
4. Commencement of term of office.  
5. Holding over after expiration of term.  
6. Mode of choosing state officers if not otherwise provided.  
7. Appointment by the governor and senate.  
8. Commissions of officers.

- 9. Deputies, their appointment, number and duties.
- 10. Official oaths.
- 11. Official undertakings.
- 12. Force and effect of official undertaking.
- 13. Notice of neglect to file oath or undertaking.
- 14. Effect of consolidation on terms of office.
- 15. Validation of official acts performed before filing official oath or undertaking.
- 16. Qualifications of certain judicial officers in cities of the first class.

### **§ 2. Qualifications for holding office.**

No person shall be capable of holding a civil office who shall not, at the time he shall be chosen thereto, be of full age, a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised.

### **§ 4. Commencement of term of office.**

The term of office of an elective officer, unless elected to fill a vacancy then existing, shall commence on the first day of January next after his election, if the commencement thereof be not otherwise fixed by law.

### **§ 5. Holding over after expiration of term.**

Every officer except a judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the constitution, having duly entered on the duties of his office, shall, unless the office shall terminate or be abolished, hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor. An officer so holding over for one or more entire terms, shall, for the purpose of choosing his successor, be regarded as having been newly chosen for such terms. An appointment for a term shortened by reason of a predecessor holding over, shall be for the residue of the term only.

### **§ 6. Mode of choosing state officers if not otherwise provided.**

If the law shall not otherwise provide the mode of choosing a state officer, he shall be appointed by the governor by and with the advice and consent of the senate.

### **§ 7. Appointment by the governor and senate.**

An appointment to an office by the governor by and with the advice and consent of the senate, shall be made by communicating to the senate, while in session, a written nomination of a person for the office, designating the residence of the nominee, and if nominated to be an officer of a political subdivision of the state, designating also such subdivision, and if nominating two or more persons to the same office for different terms, designating the term for which each is nominated. If such nomination be of a successor to a predecessor in the same office, it may be made and acted upon by the senate after the expiration of the term or occurrence of a vacancy in the office of such predecessor, or at any time during the legislative session of the calendar year in which the term of office of such predecessor shall expire or in which the

office shall become vacant. If the appointment be made before the expiration of the term of such predecessor, the term of office of the appointee shall commence upon the expiration of the term of such predecessor, or if made to fill a vacancy, upon the occurrence of such vacancy, or immediately if a vacancy already exist. If the senate shall reject such nomination, the clerk of the senate shall forthwith communicate, by writing, signed by the president and clerk of the senate, to the governor the fact of such rejection. If the senate shall confirm such nomination the appointment shall be deemed complete, and thereupon duplicate certificates of the confirmation shall be made and signed by the president and clerk of the senate, who shall cause one to be delivered to the governor and the other to the secretary of state, who shall record the same in his office in a book kept for that purpose.

#### **§ 8. Commissions of officers.**

The commission of every officer appointed by the governor, or by the governor by and with the consent of the senate, shall be signed by the governor and attested under the seal of this state, by the secretary of state, who shall make and record in his office a copy of such commission, and deliver the original to the officer appointed, by a messenger, if the governor shall so direct, and otherwise, by mail, or as the secretary of state shall deem proper. Commissions of notaries public may be signed by the secretary to the governor, and shall be sent to the county clerk of the county in which such notaries public respectively reside. Every other appointment of an officer, made by one or more state officers, shall be in writing, and signed by the officer or officers, or by a majority of the officers, or by the presiding officer of the board or body making the appointment. Every such written appointment shall be deemed the commission of the officer appointed, and if of a state officer, a duplicate or a certified copy thereof shall be recorded in the office of the secretary of state; if of a local officer it shall be sent to the clerk of the county in which the officer appointed shall then reside, who shall file the same in his office, and notify the officer appointed of his appointment.

#### **§ 9. Deputies, their appointment, number and duties.**

Every deputy, assistant, or other subordinate officer, whose appointment or election is not otherwise provided for, shall be appointed by his principal officer, board or other body, and the number thereof, if not otherwise prescribed by law, shall be limited in the discretion of the appointing power. If there is but one deputy, he shall, unless otherwise prescribed by law, possess the powers and perform the duties of his principal during the absence or inability to act of his principal, or during a vacancy in his principal's office. If there be two or more deputies of the same officer, such officer may designate, in writing, the order in which the deputies shall act, in case of his absence from the office or his inability to act, or in case of a vacancy in the office, and if he shall fail to make such designation, the deputy longest in office present shall so act. If two or more deputies present shall have held the office for the same period, the senior deputy in age shall so act. Such written designation by a state officer shall be filed in the office of the secretary of state; and by any other officer, in the office of the clerk of the county in which the principal has his office. If a vacancy in a public office shall be caused by the death of the incumbent, the deputies shall, unless otherwise provided by law, continue to hold office until the vacancy shall have been filled in accordance with law.



### § 10. Official oaths.

Every officer shall take and file the oath of office required by law before he shall be entitled to enter upon the discharge of any of his official duties. An oath of office may be administered by a judge of the court of appeals or by any officer authorized to take, within the state, the acknowledgment of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed, or may be administered to any member of a body of officers, by a presiding officer or clerk thereof, who shall have taken an oath of office. The oath of office of a notary public or commissioner of deeds shall be filed in the office of the clerk of the county in which he shall reside. The oath of office of every state officer shall be filed in the office of the secretary of state, or every officer of a municipal corporation, with the clerk thereof, and of every other officer in the office of the clerk of the county in which he shall reside, if no place be otherwise provided by law for the filing thereof.

(Amended by L. 1913, ch. 59. In effect March 6, 1913).

### § 11. Official undertakings.

Every official undertaking, when required by or in pursuance of law to be hereafter executed or filed by any officer shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such officer, in accordance with law, or in default thereof that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default, not exceeding a sum if any, specified in such undertaking. The undertaking of a state officer shall be approved by the comptroller both as to its form and as to the sufficiency of the sureties and be filed in the comptroller's office. The undertaking of a municipal officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the chief executive officer or by the governing body of the municipality and be filed with the clerk thereof. The approval by such governing body may be by resolution, a certified copy of which shall be attached to the undertaking. The undertaking of a county officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county, and filed in his office, except that the undertakings of a county clerk shall be filed in the office of the state comptroller. The undertaking of a town officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county and filed in his office. The sum specified in an official undertaking shall be the sum for which such undertaking shall be required by or in pursuance of law to be given. If no sum, or a different sum from that required by or in pursuance of law, be specified in the undertaking, it shall be deemed to be an undertaking for the amount so required. If no sum be required by or in pursuance of law to be so specified, the officer or board authorized to approve the undertaking shall fix the sum to be specified therein. Every official undertaking shall be executed and duly acknowledged by at least two sureties, each of whom shall add thereto his affidavit that he is a freeholder or householder within the state, stating his occupation and residence and the street number of his residence and place of business if in a city, and a sum which he is worth over and above his just debts and liabilities and property exempt from execution. The aggregate of the sums so stated in such affidavits must be at least double the amount specified in the undertaking. If the surety on an official undertaking of a state or local officer, clerk, or employee of the state or political subdivision thereof or of a municipal corporation be a fidelity or surety corporation, the reasonable expenses of procuring such surety, not exceeding one per centum per annum upon the sum for which such undertaking shall be required by or in pursuance of law to be given, shall be a charge against the state or political subdivision or municipal corporation respectively in and for which he is elected or appointed, except that the expense of procuring such surety as aforesaid, on an official undertaking of any officer, clerk or employee in any city department of the city of New York, or of any officer, board or body of said city, or of a borough or county within said city, including officers, clerks and employees of every court within said city shall not be a charge upon said city or upon any of the counties contained within said city.

unless the comptroller of the said city, shall first have approved the necessity of requiring such official undertaking to be given, and shall have approved of or fixed the amount of any such official undertaking; but this exception shall not apply to an official undertaking specifically required by statute to be given, and the amount of which is specifically fixed by statute. The failure to execute an official undertaking in the form or by the number of sureties required by or in pursuance of law, or of a surety thereto to make an affidavit required by or in pursuance of law, or in the form so required, or the omission from such an undertaking of the approval required by or in pursuance of law, shall not affect the liability of the sureties therein.

(Amended by L. 1911, ch. 424; L. 1912, ch. 491; L. 1913, ch. 325; L. 1914, ch. 48; L. 1915, ch. 828. in effect May 14, 1915.)

#### § 12. Force and effect of official undertaking.

An officer of whom an official undertaking is required, shall not receive any money or property as such officer, or do any act affecting the disposition of any money or property which such officer is entitled to receive or have the custody of, before he shall have filed such undertaking; and any person having the custody or control of any such money or property shall not deliver the same to any officer of whom an undertaking is required until such undertaking shall have been given. If a public officer required to give an official undertaking, enters upon the discharge of any of his official duties before giving such undertaking, the sureties upon his undertaking subsequently given for or during his official term shall be liable for all his acts and defaults done or suffered and for all moneys and property received during such term prior to the execution of such undertaking, or if a new undertaking is given, from the time notice to give such new undertaking is served upon him. Every official undertaking shall be obligatory and in force so long as the officer shall continue to act as such and until his successor shall be appointed and duly qualified, and until the conditions of the undertaking shall have been fully performed. When an official undertaking is renewed pursuant to law the sureties upon the former undertaking shall not be liable for any official act done or moneys received after the due execution, approval and filing of the new undertaking.

#### § 13. Notice of neglect to file oath or undertaking.

The officer or body making the appointment or certificate of election of a public officer shall, if the officer be required to give an official undertaking to be filed in an office other than that in which the written appointment or certificate of election is to be filed, forthwith give written notice of such appointment or election to the officer in whose office the undertaking is to be filed. If any officer shall neglect, within the time required by law, to take and file an official oath, or execute and file an official undertaking, the officer, with whom or in whose office such oath or undertaking is required to be filed, shall forthwith give notice of such neglect, if of an appointive officer, to the authority appointing such officer; if of an elective officer, to the officer, board or body authorized to fill a vacancy in such office, if any, if none and a vacancy in the office may be filled by a special election, to the officer, board or body authorized to call or give notice of a special election to fill such vacancy; except that the notice of a failure of a justice of the peace to file his official oath, shall be given to the town clerk of the town for which the justice was elected.

#### § 14. Effect of consolidation on terms of office.

If an officer be continued by the consolidated laws constituting the consolidation of which this chapter is a part, the person lawfully holding such office at the time of the taking effect of such consolidated laws shall, subject to the provisions of such consolidated laws, continue therein for the term for which he was chosen, or if holding over after the expiration of his term, until his successor shall be chosen and shall have qualified.

#### § 15. Validation of official acts performed before filing official oath of undertaking.

If a public officer, duly chosen, has heretofore entered, or shall hereafter enter on the performance of the duties of his office, without taking or filing

an official oath, or executing or filing an official undertaking, as required by the constitution, or by any general or special law, his acts as such officer, so performed, shall be as valid and of as full force and effect as if such oath had been duly taken and filed, and as if such undertaking had been duly executed and filed, notwithstanding the provisions of any general or special law declaring any such office vacant or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty for omission to take or file any such oath, or to execute or file any such undertaking; but this section shall not otherwise affect any provision of any general or special law, declaring any such office vacant, or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty, by reason of the failure to take or file any such oath or to execute or file any such undertaking; and this section shall not relieve any such officer from the criminal liability imposed by section eighteen hundred twenty of the penal law for entering on the discharge of his official duties without taking or filing such oath or executing or filing such undertaking.

### § 16. Qualifications of certain judicial officers in cities of the first class.

A person shall be eligible for appointment to the office of magistrate, judge or justice of an inferior court of criminal jurisdiction in a city of the first class, who shall at the time of such appointment be of full age a citizen of the United States, a resident of the city, an attorney and counselor-at-law admitted to practice for the period prescribed by special law, or in lieu thereof shall have been a member of the legislature of the state for at least twelve consecutive years, notwithstanding the provisions of any general or special law inconsistent herewith.

(Added by L. 1913, ch. 326. In effect May 17, 1913.)

## ARTICLE 3.

### Creation and Filing of Vacancies.

#### Section 30. Creation of vacancies.

31. Resignations.
32. Removals by senate.
33. Removals by governor.
34. Evidence in proceedings for removal by governor.
35. Removals from office.
- 35a. Removal for treasonable or seditious acts or utterances.
36. Removal of town or village officer by court.
37. Notice of existence of vacancy.
38. Terms of officers chosen to fill vacancies.
39. Filling vacancies in office of officer appointed by governor and senate.
40. Vacancy occurring in office of legislative appointee, during legislative recess.
41. Vacancies filled by legislature.
42. Filling other vacancies.

### § 30. Creation of vacancies.

Every office shall be vacant upon the happening of either of the following events before the expiration of the term thereof:

1. The death of the incumbent,
2. His resignation,
3. His removal from office;
4. His ceasing to be an inhabitant of the state or if he be a local officer, of the political subdivision or municipal corporation of which he is required to be a resident when chosen,
5. His conviction of a felony, or a crime involving a violation of his oath of office,
6. The entry of a judgment or order of a court of competent jurisdiction declaring him to be insane or incompetent,
7. The judgment of a court, declaring void his election or appointment, or that his office is forfeited or vacant.

8. His refusal or neglect to file his official oath or undertaking, if one is required, before or within fifteen days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within fifteen days after notice of his appointment, or within fifteen days after the commencement of such term, or to file a renewal undertaking within the time required by law, or if no time be so specified, within fifteen days after notice to him in pursuance of law, that such renewal undertaking is required. When a new office or an additional incumbent of an existing office shall be created, such office shall for the purposes of an appointment or election, be vacant from the date of its creation, until it shall be filled by election or appointment.

Amended by L. 1920, ch. 259.

### § 31. Resignations.

Public officers may resign their offices as follows:

1. The governor, lieutenant-governor, secretary of state, comptroller, attorney-general, state engineer and surveyor, to the legislature;

2. All officers appointed by the governor alone, or by him with the consent of the senate, to the governor;

3. Senators and members of assembly, to the presiding officers of their respective houses;

4. Sheriffs, coroners, county clerks, district attorneys and registers of counties, to the governor;

5. Every other county officer, to the county clerk;

6. Every town officer, to the town clerk;

7. The officer of any other municipal corporation, to clerk of the corporation;

8. Every other appointive officer, where not otherwise provided by law, to the body, board or officer that appointed him, and every other elective officer, where not otherwise provided by law, to the secretary of state.

Every resignation shall be in writing addressed to the officer or body to whom it is made. If addressed to an officer, it shall take effect upon delivery to him at his place of business or when it shall be filed in his office.

If addressed to the legislature or to the presiding officer of either house thereof it shall be delivered to and filed with the secretary of state, and shall take effect when so delivered, and he shall forthwith communicate the fact of such resignation to the legislature or to such house, if in session, or if not, at its first meeting thereafter.

If addressed to any other body it shall be delivered to the presiding officer or clerk of such body, if there be one, and if not, to any member thereof, and shall take effect upon such delivery, and shall be filed with the clerk, or if there be no clerk, with the other records of such body. A delivery at the office or place of residence or business of the person to whom any such resignation may be delivered shall be a sufficient delivery thereof.

### § 32. Removals by senate.

The governor before making a recommendation to the senate for the removal of any officer may in his discretion take proofs, for the purpose of determining whether such recommendation shall be made.

The secretary of state, comptroller, treasurer, attorney-general, or the state engineer and surveyor, may be removed by the senate, on the recommendation of the governor, for misconduct or malversation in office, if two-thirds of all the members elected to the senate shall concur therein. No such removal shall

be made unless the person who is sought to be removed, shall have been served with a copy of the charges against him and have an opportunity of being heard. On the question of removal, the yeas and nays shall be entered on the journal. The governor may convene the senate in extra session for the investigation of such charges. The senate shall have power to make such rules as it may see fit for the practice before it. At the time appointed for the investigation, the senate shall proceed to hear and try the charges against such officer, and may take proofs in relation thereto.

The governor may direct the attorney-general, or may appoint any suitable person to conduct the trial of such charges before the senate.

An officer appointed by the governor by and with the advice and consent of the senate, may be removed by the senate upon the recommendation of the governor.

If the senate shall reject a recommendation of removal the clerk of the senate shall, by a writing signed by him and by the president and clerk of the senate, communicate the fact of such rejection to the governor. If the senate shall concur in such a recommendation the removal shall take effect upon the passage of the resolution of concurrence, and duplicate copies of such resolution, certified by the clerk and president of the senate, shall be executed and delivered by the clerk to the secretary of state.

### **§ 33. Removals by governor.**

An officer appointed by the governor for a full term or to fill a vacancy, any county treasurer, any county superintendent of the poor, any register of a county, any coroner or any notary public, may be removed by the governor within the term for which such officer shall have been chosen, after giving to such officer a copy of the charges against him and an opportunity to be heard in his defense.

### **§ 34. Evidence in proceedings for removal by governor.**

The governor may take the evidence in any proceeding for the removal by him of a public officer or may direct that the evidence be taken before a justice of the supreme court of the district, or the county judge of the county in which the officer proceeded against shall reside, or before a commissioner appointed by the governor for that purpose by an appointment in writing filed in the office of the secretary of state. The governor may direct such judge or commissioner to report to him the evidence taken in such proceeding, or the evidence and the findings by the judge or commissioner of the material facts deemed by such judge or commissioner to be established. The commissioner or judge directed to take such evidence may require witnesses to attend before him, and shall issue subpoenas for such witnesses as may be requested by the officer proceeded against.

The governor may direct the attorney-general or the district attorney of the county in which the officer proceeded against shall reside to conduct the examination into the truth of the charges alleged as ground for such removal. If the examination shall be before a commissioner or judge, it shall be held at such place in the county in which the officer proceeded against shall reside as the commissioner or judge shall appoint, and at least eight days after written notice of the time and place of such examination shall have been given to the officer proceeded against.

All sheriffs, coroners, constables and marshals to whom process shall be

directed and delivered under this section shall execute the same without unnecessary delay.

**§ 35. Removals from office.**

Every removal of an officer by one or more state officers, shall be in written duplicate orders, signed by the officer, or by all or a majority of the officers, making the removal, or if made by a body or board of state officers may be evidenced by duplicate certified copies of the resolution or order of removal, signed either by all or by a majority of the officers making the removal, or by the president and clerk of such body or board. Both such duplicate orders or certified copies shall be delivered to the secretary of state, who shall record in his office one of such duplicates, and shall, if the officer removed is a state officer, deliver the other to such officer by messenger, if required by the governor, and otherwise by mail or as the secretary of state shall deem advisable, and shall, if directed by the governor, cause a copy thereof to be published in the state paper. If the officer removed be a local officer, he shall send the other of such duplicates to the county clerk of the county in which the officer removed shall have resided at the time he was chosen to the office, and such clerk shall file the same in his office, and forthwith notify the officer removed of his removal.

**§ 35-a. Removal for treasonable or seditious acts or utterances.**

A person holding any public office shall be removed therefrom, in the manner provided by law, for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts during his term.

**§ 36. Removal of town or village officer by court.**

Any town or village officer, except a justice of the peace, may be removed from office by the supreme court for any misconduct, maladministration, malfeasance or malversation in office. An application for such removal may be made by any citizen resident of such town or village and shall be made to the appellate division of the supreme court held within the judicial department embracing such town or village. Such application shall be made upon notice to such town officer of not less than eight days, and a copy of the charges upon which the application will be made must be served with such notice.

**§ 37. Notice of existence of vacancy.**

When a judgment shall be rendered by any court convicting an officer of a felony, or of a crime involving a violation of his oath of office, or declaring the election or appointment of any officer to be void, or that the office of any officer has been forfeited or become vacant, the clerk of such court shall give notice thereof to the governor, stating the cause of such conviction or judgment.

Whenever a public officer shall die before the expiration of his term of office, or shall cease to be a resident of the political subdivision of the state or a municipal corporation in which he is required to be a resident as a condition of continuing in the office, the county clerk of the county in which such officer shall have resided immediately prior to such death or removal, shall immediately give notice of such death or removal to the governor. If the governor is not authorized to fill any vacancy of which he shall have notice, he shall forthwith give notice of the existence of such vacancy to the officer or officers, or to the body or board of officers authorized to fill the vacancy, or if such vacancy may be filled by an election, to the officers authorized to give notice of such election.

**§ 38. Terms of officers chosen to fill vacancies.**

If an appointment of a person to fill a vacancy in an appointive office be made by the officer, or by the officers, body or board of officers, authorized to



make appointment to the office for the full term, the person so appointed to such vacancy shall hold office for the balance of the unexpired term. The term of office of an officer appointed to fill a vacancy in an elective office, shall be until the commencement of the political year next succeeding the first annual election after the happening of the vacancy, if the office be made elective by the constitution, or at which the vacancy can be filled by election, if the office be otherwise made elective.

**§ 39. Filling vacancies in office of officer appointed by governor and senate.**

A vacancy which shall occur during the session of the senate, in the office of an officer appointed by the governor by and with the advice and consent of the senate, shall be filled in the same manner as an original appointment. Such a vacancy occurring or existing otherwise than by expiration of term, while the senate is not in session, shall be filled by the governor for a term which shall expire at the end of twenty days from the commencement of the next meeting of the senate.

**§ 40. Vacancy occurring in office of legislative appointee, during legislative recess.**

When a vacancy shall occur or exist, otherwise than by expiration of term, during the recess of the legislature, in the office of any officer appointed by the legislature, the governor shall appoint a person to fill the vacancy for a term which shall expire at the end of twenty days from the commencement of the next meeting of the legislature.

**§ 41. Vacancies filled by legislature.**

When a vacancy occurs or exists, other than by removal, in the office of the secretary of state, comptroller, treasurer, attorney general, or state engineer and surveyor, or a resignation of any such office to take effect at any future day shall have been made while the legislature is in session, the two branches thereof, by joint ballot, shall appoint a person to fill such actual or prospective vacancy.

**§ 42. Filling other vacancies.**

If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election. But if the term of such officer shall expire with the calendar year in which the appointment shall be made, or if the office be appointive, the appointee shall hold for the residue of the term.

**ARTICLE 4.**

**Powers and Duties of Public Officers.**

Section 60. Official seals of court of appeals and state officers.

61. Investigation by state officers.

62. Business in public offices on public holidays.

63. Leave of absence for veterans on Memorial day.

64. Payment of expenses of public officers.

65. Use of typewriters for recording public records.

**Section 66.** Persons having custody of papers in public offices to search files and make transcripts.

67. Fees of public officers.

68. Allowance of additional fees and expenses.

69. Fee for administering certain official oaths prohibited.

70. Accounting for fees.

71. Vacations for employees of the state and the several civil subdivisions thereof.

72. Notices and reports of claims, suits or causes of action to be given to the attorney-general.

### **§ 60. Official seals of court of appeals and state officers.**

The seal of the court of appeals and of each state officer authorized to use an official seal, shall be of metal with the device of the arms of the state surrounded with the inscription, State of New York, and the name of the court or official designation of the officer. The seal of such court, the privy seal of the governor, and the seal of the secretary of state, comptroller, treasurer, state engineer and surveyor, the adjutant-general, and of each of the other state officers at the capital, required to have an official seal, shall be two and one-quarter inches in diameter, and of each other state officer authorized to have an official seal, shall be one and three-quarters inches in diameter. Such seals heretofore provided by the secretary of state shall continue to be used by such courts and officers, and when defective from wear or otherwise, shall be delivered to the secretary of state who shall cause them to be repaired and returned, or to be defaced with a suitable mark, or deposited with the ancient seals in the state library, and new seals to be provided for use instead.

### **§ 61. Investigations by state officers.**

Every state officer, in any proceeding held before him, or in any investigation held by him for the purpose of making inquiry as to the official conduct of any subordinate officer or employee, shall have the power to issue subpoenas for and require the attendance of witnesses and the production of all books and papers relating to any matter under inquiry. All such subpoenas shall be issued under the hand and seal of the state officer holding such proceeding. If a person duly subpoenaed fails to obey such subpoena without reasonable cause, or shall, without such cause, refuse to be examined or to answer any legal or pertinent question or to produce any such book or paper called for, he may be punished as for a contempt. The testimony of witnesses in any such proceeding shall be under oath and the state officer instituting the proceeding shall have power to administer oaths. In case of state boards or commissions, any member of the same, or, when duly authorized by resolution, the secretary of such board or commission, shall have power to issue subpoenas and administer oaths for the purposes of this section.

### **§ 62. Business in public offices on public holidays.**

Holidays and half holidays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of the state, and of each county. On all other days and half days, excepting Sundays, such offices shall be kept open for the transaction of business.

### **§ 63. Leave of absence for veterans on Memorial day.**

It shall be the duty of the head of every public department and of every court of the state of New York, of every superintendent or foreman on the public works of said state, of the county officers of the several counties of said state, and of the head of every department, bureau and office in the govern-

ment of the various cities and villages in this state, to give leave of absence with pay for the twenty-four hours of the thirtieth day of May, or such other day as may, according to law, be observed as Memorial day, to every person in the service of the state, the county, the city or village, as the case may be, who served in the army or the navy of the United States in the war of the rebellion, or who served in the regular or volunteer army or the navy or the marine corps of the United States during the war with Spain or during the insurrection in the Philippine Islands, or who served in the army or navy or marine corps of the United States during the world war or who served in the regular army or navy or marine corps of the United States, and who was honorably discharged from such service. A refusal to give such leave of absence to one entitled thereto shall be neglect of duty.

(Amended by L. 1910, ch. 335, L. 1920, ch. 63.)

#### **§ 64. Payment of expenses of public officers.**

Every public officer who is not allowed any compensation for his services shall be paid his actual expenses necessarily incurred in the discharge of his official duties.

#### **§ 65. Use of typewriters for recording public records.**

The public officers of the state or of any municipal corporation therein having charge of the recording of public records, papers, documents or matters required by law to be recorded in their respective offices, are hereby authorized and empowered to use typewriting machines for recording the same.

#### **§ 66. Persons having custody of papers in public offices to search files and make transcripts.**

A person, having the custody of the records or other papers in a public office, within the state, must, upon request, and upon payment of, or offer to pay, the fees allowed by law, or, if no fees are expressly allowed by law, fees at the rate allowed to a county clerk for a similar service, diligently search the files, papers, records, and dockets in his office; and either make one or more transcripts therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to him, can not be found.

#### **§ 67. Fees of public officers.**

1. Each public officer upon whom a duty is expressly imposed by law, must execute the same without fee or reward, except where a fee or other compensation therefor is expressly allowed by law.

2. An officer or other person, to whom a fee or other compensation is allowed by law, for any service, shall not charge or receive a greater fee or reward, for that service, than is so allowed.

3. An officer, or other person, shall not demand or receive any fee or compensation, allowed to him by law for any service, unless the service was actually rendered by him; except that an officer may demand in advance his fee, where he is, by law, expressly directed or permitted to require payment thereof, before rendering the service.

An officer or other person, who violates either of the provisions contained in this section, is liable, in addition to the punishment prescribed by law for the criminal offense, to an action in behalf of the person aggrieved, in which the plaintiff is entitled to treble damages.

#### **§ 68. Allowance of additional fees and expenses.**

Where an officer or other person is required, in the course of a duty imposed upon him by law, to take an oath, to acknowledge an instrument, to cause an

instrument to be filed or recorded, or to transmit a paper to another officer, he is entitled, in addition to the fees, or other compensation for the service, prescribed by law, to the fees necessarily paid by him, to the officer who administered the oath, or took the acknowledgment, or filed or recorded the instrument; and to the expense of transmitting the paper, including postage, where the transmission is lawfully made through the post-office.

**§ 69. Fee for administering certain official oaths prohibited.**

An officer is not entitled to a fee, for administering the oath of office to a member of the legislature, to any military officer, to an inspector of election, clerk of the poll, or any town officer; or to more than ten cents, for administering an official oath to any other officer.

**§ 70. Accounting for fees.**

Where a public officer is required, by law, to keep an account of, or to pay over, the fees or other moneys, received by him for official services, he must include therein all sums, received by him, to which he was entitled, by reason of any act, performed by him in his official capacity; whether the act did or did not pertain to his office, or to the business thereof.

**§ 71. Vacations for employees of the state and the several civil subdivisions thereof.**—The executive officers of every public department, bureau, commission, or board of the state and of each county, city or other civil division thereof are authorized and empowered to grant to every employee under their supervision, who shall have been in such employ for at least one year, a vacation of not less than two weeks in each year, and for such further period of time as in the opinion and judgment of the executive officers, the duties, position, length of service and other circumstances may warrant, at such time as the executive officers may fix and during such vacation the said employee shall be allowed the same compensation as if actually employed.

Added by L. 1910, ch. 680.

**§ 72. Notices and reports of claims, suits or causes of action to be given to the attorney-general.**

1. Every officer, clerk, agent or employee of any department of the state government, who shall have knowledge of any accident or injury to the person or property of any person or corporation, on account of which there arises or may arise a claim, suit or cause of action against the state, or of any accident or injury to property owned by the state, on account of which there arises or may arise a claim, suit or cause of action in favor of the state, shall immediately give notice thereof to the officer or employee in charge of his bureau or department.

2. Every department, commission, board or officer, or the person in charge thereof, who has knowledge that a claim has accrued or may have accrued or made either against, or in favor of, the state, or of any accident or injury to the person or property of any person or corporation, or of the state on account of which there arises or may arise a claim, suit or cause of action against, or in favor of, the state, or an officer thereof, shall immediately give notice to the attorney-general, stating the time when, and the place where, such claim, suit or cause of action may have arisen, and the nature of the same, and such other information and evidence as the attorney-general may direct or deem necessary. The attorney-general shall make such investi-

gation of the facts, relating to any matter so reported, as he may deem necessary.

Added by L. 1919, ch. 425.

## ARTICLE 5.

### Delivery of Public Books.

Section 80. Delivery of books and papers.

#### § 80. Delivery of books and papers.

A public officer may demand from any person in whose possession they may be, a delivery to such officer of the books and papers belonging or appertaining to such office. If such demand is refused, such officer may make complaint thereof to any justice of the supreme court of the district, or to the county judge of the county in which the person refusing resides. If such justice or judge be satisfied that such books or papers are withheld, he shall grant an order directing the person refusing to show cause before him, at a time specified therein, why he should not deliver the same. At such time, or at any time to which the matter may be adjourned, on proof of the due service of the order, such justice or judge shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers makes affidavit before such justice or judge that he has delivered to the officer all books and papers in his custody which, within his knowledge, or to his belief belong or appertain thereto, such proceedings before such justice or judge shall cease, and such person be discharged. If the person complained against shall not make such oath, and it appears that any such books or papers are withheld by him, such justice or judge shall commit him to the county jail until he deliver such books and papers, or is otherwise discharged according to law. On such commitment, such justice or judge, if required by the complainant, shall also issue his warrant directed to any sheriff or constable, commanding him to search, in the daytime, the places designated therein, for such books and papers, and to bring them before such justice or judge. If any such books and papers are brought before him by virtue of such warrant, he shall determine whether they appertain to such office, and if so shall cause them to be delivered to the complainant.

## ARTICLE 6.

### Construction; Laws Repealed; When to Take Effect.

Section 90. Application of chapter.

91. Laws repealed.

92. When to take effect.

#### § 90. Application of chapter

This chapter applies to civil officers only.

#### § 91. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

#### § 92. When to take effect.

This chapter shall take effect immediately.

## **PART 7.**

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**STATE, COUNTY AND CITY ELECTIVE OFFICERS.**  
**MISCELLANEOUS PROVISIONS.**





# STATE, COUNTY AND CITY ELECTIVE OFFICERS.

## MISCELLANEOUS PROVISIONS.

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### **Record of terms of judges of courts of record.**

The secretary of state must keep a record of the time of the commencement and termination of the official term, of each judge of a court of record.

Executive Law, § 29.

### **Undertaking of state treasurer.**

The treasurer shall give an official undertaking in the sum of fifty thousand dollars, approved by the president of the senate, speaker of the assembly and comptroller. After the appointment and qualification of his successor, upon filing in the office of the secretary of state a certificate from the committee who shall have examined and settled his accounts of the preceding year, certifying that such accounts are regularly stated and balanced, and that the balance, if any, is actually in the treasury, or deposited as required by law, such undertaking shall be delivered to him for cancellation.

Executive Law, § 51.

### **Deputy attorney-general to act as special district attorney and as counsel to state superintendent of elections.**

Whenever the governor shall advise the attorney-general that he has reason to doubt whether in any county the law relating to crimes against the elective franchise is properly enforced, the attorney-general shall require from the district attorney of such county, and it shall be the duty of such district attorney forthwith to make to the attorney-general a report of all prosecutions and complaints within his county during the year then last past for offenses under the election law and article seventy-four of the penal law and of the action had thereon. The attorney-general may require from the state superintendent of elections, and it shall be that officer's duty forthwith to make a report of all prosecutions within such county during the year then last past for such offenses upon complaints made by, said superintendent, or his deputy superintendents of elections, and of the action had thereon. The attorney-general shall assign one or more of his deputies to act as counsel for the state superintendent of elections and to take charge of prosecutions under the election law and article seventy-four of the penal law. Such deputy shall represent the people of this state in all such prosecutions before all magistrates and in all courts and before any grand jury having cognizance thereof; and shall act as special counsel and adviser to said state superintendent of elections in the performance of his duties. The deputies so assigned shall be appointed pursuant to section sixty-one of this chapter. They may be especially

appointed thereunder for the purpose of such assignment and for the performance of the duties herein described. Whenever the attorney general shall advise the governor that there is occasion for an extraordinary term in any such county to inquire into and try cases arising under said article seventy-four of the penal law, the governor may appoint an extraordinary term of the supreme court to be constituted and held for the trial of criminal cases in such county, pursuant to section one hundred and fifty-three of the judiciary law. Grand and petit juries shall be drawn and summoned for said term in the manner provided by law, and such cases shall be brought before such inquest and court as the attorney-general shall direct. All the provisions of sections sixty-two and sixty-five of this chapter shall apply to such extraordinary term. It shall be the duty of the district attorney of the county, and of the assistants, clerks and employees in his office, and of all police authorities, officers and men within any such county, to render to the attorney general and his deputy, whenever requested, all aid and assistance within their power in such prosecutions and in the conduct of such cases. The jurisdiction conferred upon the attorney general herein to prosecute crimes, is concurrent in each county with that of the district attorney; but whenever of such officers shall first assume jurisdiction of a particular offense shall have exclusive jurisdiction to prosecute for the same unless or until the governor shall by written order filed with both such officers, give such jurisdiction to the other.

Executive Law, § 67, as amended by L. 1916, ch. 339.

#### **Judge of court of record must file certificate of age and time of expiration of term.**

A judge of a court of record must, within ten days after he enters on the duties of his office, make and sign a certificate stating his age, and the time when his official term will expire, either by completion of a full term, or by reason of the disability of age, prescribed in the constitution. The certificate must be filed in the office of the secretary of state.

Judiciary Law, § 23.

#### **Appellate division may direct county clerk or commissioner of jurors to destroy papers or books.**

The appellate division of the supreme court, in any department, may, upon petition, by order made at any term thereof direct a county clerk or a commissioner of jurors to destroy any papers or books or surplus copies of any papers or books now deposited, filed or of record, or hereafter to be deposited, filed, or of record, in his office, which the court deems to have become useless. Provided however that in those counties where commissioners of records have been appointed, a copy of said petition, if for the destruction of any papers or books or surplus copies of any papers books or records in the office of a county clerk, shall be served upon the commissioner of records at least five days before application is made to said court. But this provision does not authorize the destruction of a judgment roll, or a paper incorporated or necessary to be incorporated in a judgment-roll.

Judiciary Law, § 87, as amended by L. 1911, ch. 276; L. 1912, ch. 252; L. 1913, ch. 402. In effect April 29 1913.

#### **Contested elections of legislators.**

Upon the application of any person desirous of obtaining testimony respecting the election of a member of either house for the purpose of contesting an election, or resisting a contest thereof, any county judge of the county, or

justice of the supreme court of the district, or the mayor or recorder of a city in which the member or applicant shall reside, may require the attendance of persons named by the applicant, at a specified time and place, to be examined respecting such election; and shall, at the same time, issue a notice to the opposite party of the time, place and object of such examination. The notice shall be served in the same manner as a notice of motion in a court of record. At the time appointed for the examination, upon proof of the due service of such notice, the witnesses who shall attend or who shall be produced by either party, shall be examined under oath before such officer, respecting such matters relating to the election about to be contested, as shall be proposed by either party. The testimony given upon such examination shall be reduced to writing, signed by the witnesses respectively, certified by the officer before whom it was taken, and with the subpoena, notice and proof of the service thereof, shall be sent by him under seal to the clerk of the house to which the election pertains.

A witness attending before such officer, by virtue of a subpoena, shall receive the same fees as are allowed to witnesses in civil suits in courts of record, to be paid by the party at whose instance such witness was summoned.

Legislative Law, § 64.

**Election, appointment, term of office and undertaking of county treasurer.**

There shall continue, (1) to be elected in each of the counties except in the counties of Kings, Queens and Richmond, a county treasurer, who shall hold his office for three years from and including, in the county of Monroe, the first Tuesday of October, and in the other counties, the first day of January, succeeding his election, and until his successor is duly elected and qualified; (2) to be appointed by the governor, by and with the consent of the senate, if in session, a county treasurer, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including, in the county of Monroe, the first Monday of October, and in the other counties, the last day of December, succeeding his appointment, and until his successor shall be duly elected and qualified. Every person elected or appointed to the office of county treasurer shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, give an undertaking to the county, with three or more sufficient sureties, with the approval of the board of supervisors, if in session, indorsed thereon by the clerk, otherwise with the approval of the county judge and county clerk, and in such sum as such board or judge and clerk approving the same shall direct, to the effect that such person shall faithfully execute the duties of his office, and shall pay over according to law, and account for all moneys, property and securities which shall come to his hands as treasurer, and render a just and true account thereof to the board of supervisors when required, and obey all orders and directions of a competent court relating thereto. When, in the opinion of the board of supervisors, the moneys intrusted to such person as treasurer shall be unsafe, or the surety insufficient, such board may require from such treasurer a new or further undertaking to the same effect as at first, and with like sureties; and if such county treasurer shall fail to renew such undertaking as required within twenty days after he shall be notified by such board of such request, such omission shall work a forfeiture of his office and the

same shall become vacant. Such undertaking, with the approval indorsed thereon, shall be filed in the office of the county clerk. The sureties and county therein named shall be liable to the state for the payment to the state treasurer, according to law, of all moneys belonging to the state, which shall come into his hands as county treasurer, and for the rendering of a just and true account thereof to the state comptroller.

County Law, § 140.

#### **Election, appointment, term of office and undertaking of county clerk.**

There shall continue:

1. To be elected in each of the counties a county clerk, who shall hold his office for three years from and including the first day of January succeeding his election.

2. To be appointed by the governor, a county clerk, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including the last day of December succeeding the first annual election after the happening of the vacancy.

Every person elected or appointed to the office of county clerk shall, before he enters on the duties of his office, and if appointed, within fifteen days after notice thereof, execute an undertaking to the county, with at least two sureties, with the approval of the board of supervisors, if in session, indorsed thereon by the clerk of the board, otherwise with the approval of the county judge, or a justice of the supreme court residing in the county, and in such sum as such board, judge or justice approving the same shall direct, to the effect that he will faithfully execute and discharge the duties of county clerk, and account for all moneys deposited with him pursuant to law, or the order of any court, or by his predecessor in office, and pay them over as required by law, or directed by such order.

County Law, § 160. Amended by L. 1914, ch. 62, in effect March 21, 1914.

#### **General powers and duties of county clerk.**

The county clerk shall:

3. When a certificate of election, or appointment to any county office, or revocation thereof, is received at his office, give immediate notice thereof at the expense of the county, to every person named therein. When any other commission or appointment to office, or order of removal from office is received at his office, give immediate notice thereof, at the expense of the state, to every person named therein.

4. Give immediate notice to the governor, at the expense of the state, when there is a vacancy in any county office which he is authorized to fill; and the names of all persons elected or appointed to any such office who have neglected, within the time required by law, to file the constitutional oath of office, or the undertaking severally required of them; and on or before the fifteenth day of January in each year, the names of all persons elected or appointed to a county office in his county during the preceding year, who have duly qualified.

County Law, § 161.

**Election, appointment and terms of office of sheriffs and coroners, and the undertakings of sheriffs.**

There shall continue,

1. To be elected in each of the counties a sheriff, and in each of the counties containing a population of one hundred thousand and over, except Westchester and Nassau counties, four coroners, and in all other counties such number of coroners, not more than four, as shall be fixed by the board of supervisors, who shall respectively hold their offices for three years from and including the first day of January succeeding their election. The board of supervisors of a county containing a population of one hundred thousand and over, may, by resolution duly adopted, subdivide such county into districts of not more than one district for each coroner to be elected, and on general election day in the next calendar year and every third year thereafter, there shall be elected one coroner from each of such districts, each of whom shall have jurisdiction to perform the duties of the office anywhere within the territorial limits of such county. The terms of office of all coroners elected prior to the adoption of such resolution shall expire on the thirty-first day of December in the next calendar year. The board of supervisors of a county containing a population of less than one hundred thousand, and having more than one coroner, may, by resolution, determine that after the first day of January of a year to be specified in such resolution, the number of coroners in such county shall be reduced to a specified number not less than one, and may by such resolution fix the terms of coroners to be thereafter elected in such county so that the terms of all the coroners therein will expire on the first day of January of the year specified in the resolution.

2. To be appointed by the governor, a sheriff, or a coroner, when a vacancy shall occur in either of such offices, and the person so appointed shall hold the office until and including the last day of December succeeding the first annual election thereafter, at which such vacancy can be lawfully filled.

Every person elected or appointed to the office of sheriff shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver to the county clerk of his county, a joint and several undertaking to the county, approved by such clerk to the effect that such sheriff will, in all things, perform and execute the office of sheriff of his county during his continuance therein, without fraud or deceit. Such undertaking shall be filed in the office of the county clerk; and the clerk shall, at the time of his approval thereof, examine each surety thereto under oath; and he shall not approve of such undertaking, unless it shall appear on such examination that such sureties are jointly worth at least fifteen thousand dollars over and above all debts whatever; which examination, subscribed by the sureties, shall be indorsed on or attached to the undertaking; but the clerk shall determine the sufficiency of each surety. In the same manner the security shall be renewed within the twenty days after the first Monday of January in each year subsequent to that in which he shall have entered upon the duties of his office.

3. To be elected in the county of Westchester but two coroners from and after January first, nineteen hundred and twenty-one. The two coroners whose terms of office expire subsequent to nineteen hundred and twenty-one shall continue to hold office until the expiration of their respective terms, and the coroners elected to succeed them shall hold office for a period of three years each at a salary to be fixed by the board of supervisors at not to exceed three thousand dollars per annum.

County Law, § 180; amended by L. 1912, ch. 91; L. 1916, ch. 87; L. 1920, chs. 450, 594.

**Under-sheriffs.**

Each sheriff shall, within ten days after he enters on the duties of his office, appoint some proper person under-sheriff of his county, to hold during his pleasure. When a vacancy shall occur in the office of sheriff, the under-sheriff shall, in all things, execute the duties of the office as sheriff, until a sheriff shall be elected or appointed and duly qualified; and any default or misfeasance in the office of such under-sheriff in the meantime, as well as before, shall be deemed to be a breach of the undertaking given by the sheriff who appointed him and also a breach of the undertaking executed by such under-sheriff, to the sheriff by whom he was appointed.

County Law, § 181.



**Election, appointment, term of office and undertaking of district attorney**

There shall continue,

1 To be elected in each of the counties a district attorney, who shall hold his office for three years from and including the first day of January succeeding his election.

2 To be appointed by the governor, a district attorney, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including the last day of December succeeding the first annual election thereafter at which such vacancy can be lawfully filled.

3 Except in the county of Kings, every person elected or appointed to the office of district attorney, shall, before he enters upon the duties of his office and if appointed, within fifteen days after notice thereof, execute and deliver to the county clerk of his county, a joint and several undertaking to the county, approved by the county judge, with two or more sufficient sureties being resident freeholders, and in such sum as the board of supervisors of the county shall direct, to the effect that he will faithfully account for and pay over according to law, or as the court may direct, all moneys that may come into his hands as such district attorney.

4 It shall be the duty of every district attorney to conduct all prosecutions for crimes and offenses cognizable by the courts of the county for which he shall have been elected or appointed; except when the place of trial of an indictment is changed from one county to another, it shall be the duty of the district attorney of the county where the indictment is found to conduct the trial of the indictment so removed, and it shall be the duty of the district attorney of the county to which such trial is charged to assist in such trial upon the request of the district attorney of the county where the indictment was found.

County Law, § 200, amended by L. 1914, ch. 62.

**Election, appointment and term of office of superintendents of the poor.**

There shall continue to be elected or appointed in each of the counties, except Kings, Queens and Richmond, one or more superintendents of the poor as heretofore, but no supervisor of a town or county treasurer shall be elected or appointed to such office. The board of supervisors of any county having or entitled to have three or more superintendents of the poor, may, at an annual meeting thereof, determine by resolution that thereafter only one superintendent of the poor shall be elected, but no superintendent of the poor shall be elected or appointed in such county until the general election next preceding the expiration of the terms of the superintendents in office or the office shall be vacant. The term of any superintendent in office, or of any person duly elected thereto on the passage of such resolution, shall not be affected thereby. Such board may also in like manner determine that thereafter three superintendents of the poor be elected for such county. After the passage of a resolution, as herein provided, the powers herein conferred shall not be again exercised within a period of five years. Such resolution shall not take effect until the next calendar year succeeding its adoption.

There shall continue,

1 To be elected annually in each of the counties so having and being entitled to three county superintendents, one county superintendent of the poor, who shall hold his office for three years from and including the first day of January succeeding his election, and until his successor is duly elected and qualifies;

2 To be appointed by the board of supervisors, if in session, otherwise by the county judge, a county superintendent of the poor, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies;

3. To be elected a county superintendent of the poor in a county when a vacancy shall occur in such office, and the term of which shall not expire on the last day of the next succeeding December, and the person so elected shall hold the office for such unexpired term, which shall be designated upon the ballots of the electors, or until his successor shall be elected and qualifies;

4. To be elected in each of the counties so having, and entitled to have but one superintendent, a superintendent of the poor, who shall hold his office for three years from and including the first day of January succeeding his election, and until his successor is duly elected and qualifies;

5. To be appointed by the board of supervisors, if in session, otherwise by the county judge, a superintendent of the poor, in a county having and being entitled to but one superintendent, when a vacancy shall occur in such office; and the person so appointed shall hold the office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies;

6. To be elected in the succeeding year after the board of supervisors of a county having but one superintendent of the poor, shall have adopted a resolution to have three superintendents, if the term of the superintendent in office expires with such year, three superintendents of the poor for such county, for the terms of one, two and three years respectively, which terms shall be respectively designated upon the ballots of the electors voting for such officers. If the term of the superintendent in office will not expire with such succeeding year, there shall be elected two superintendents of the poor for such county, for such terms, to be so designated upon the ballots of the electors voting for such officers, as will make the terms of one of the three superintendents expire with each succeeding year, and one superintendent of the poor shall thereafter be annually elected. Such persons so elected shall hold the office from and including the first day of January succeeding his election, and until and including the last day of December of the year in which his term shall so expire, and until his successor is duly elected and qualifies. When ballots are voted without designating the term, the first name on the ballot shall be deemed as intended for the full or longer term of the officer voted for; the second name for the next longer term, and the third name for the shorter term.

County Law, § 220.

#### **Undertaking of superintendent of the poor.**

Every person elected or appointed to the office of superintendent of the poor shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver to the clerk of the county, to be filed in his office, his undertaking to the county, with two or more sufficient sureties, with the approval of the board of supervisors, if in session, indorsed thereon by the clerk; otherwise by the county judge of his county, or a justice of the supreme court of his judicial district, and in such sum as such board, judge or justice approving the same shall direct, to the effect that he will faithfully discharge the duties of his office as such superintendent of the poor, and pay according to law all moneys that shall come into his hands as such superintendent, and render a just and true account thereof to the board of supervisors of his county.

County Law, § 221. Amended by L. 1914, ch. 62, in effect March 21, 1914.

**Election, appointment and term of office of county judge, surrogate, special county judge and special surrogate.**

There shall continue to be elected in each of the counties now having such offices,

1. A county judge and a surrogate, who shall severally hold the office for six years from and including the first day of January succeeding his election.

2. A special county judge and a special surrogate, pursuant to the several acts of the legislature creating and respectively defining the terms and duties thereof.

3. There shall continue to be appointed by the governor, by and with the consent of the senate, if in session, a county judge, surrogate, special county judge or special surrogate, when a vacancy shall occur in either of such offices, and the person so appointed shall hold the office until and including the last day of December succeeding the first annual election thereafter at which such vacancy can be lawfully filled.

County Law, § 230.

**Additional county judge in Kings county.**

From and after the passage of this act there shall be an additional county judge, in the county of Kings, making the number of county judges in said county, five instead of four as heretofore provided. This additional county judge shall receive the same compensation as the other county judges in Kings county. The powers, duties and jurisdiction of such additional county judge shall be co-ordinate and co-equal with the county judges of such county now in office. (County Law, § 230-a, as added by L. 1915, ch. 83, in effect March 19, 1916.)

**Creation and undertaking of surrogate.**

The board of supervisors of any county, except Kings, having a population exceeding forty thousand, may, by resolution at a meeting thereof, determine that the office of surrogate therein shall be a separate office, and provide for the election of such officer therein. The clerk of the board shall immediately deliver the resolution to the county clerk, who shall file the same in his office and, within ten days thereafter, transmit a certified copy thereof to the secretary of state; and thereafter a surrogate shall be elected for such county. Every person elected or appointed to the office of surrogate or county judge, where there is no separate office of surrogate, shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver to the county clerk of his county a joint and several undertaking with two or more sureties being resident freeholders, to be approved by such clerk, to the effect that he will faithfully perform his duties as such surrogate, and apply and pay over all moneys and effects that may come into his hands as such surrogate in the execution of his office; which undertaking shall be immediately filed in the office of such county clerk.

County Law, § 231.

**General provisions relating to county officers.**

Elective officers shall be chosen at general elections. A person in office, when this chapter takes effect, shall continue to hold the same until the expiration of the term for which he was elected or appointed, and a person thereafter elected to any such office on or before entering upon the duties thereof, and a person thereafter appointed to any such office within ten days after notice thereof, and before entering upon the duties of his office, shall take and subscribe before the county clerk, or county judge of the county, the constitutional oath of office; and the same, with his certificate of election or appointment, shall be immediately filed in the office of the county clerk.

County Law, § 248.

**General provisions relating to official bonds and undertakings.**

Every undertaking required by this chapter must be executed by the officer or person in whose behalf it is given, and his sureties, and duly acknowledged

or proven and certified, and the approval indorsed thereon. The parties executing the same shall be jointly and severally liable, regardless of its form in that respect, for damages sustained by reason of a breach thereof. Every officer or board required to approve an undertaking may examine each surety thereto under oath, and shall not approve the same unless the sureties are freeholders of the state and jointly worth over and above their debts and liabilities at least double a sum which such officer or board may fix upon and insert in the undertaking as reasonably sufficient to indemnify the county, and every person who may be or become interested therein, or in any breach thereof. Official bonds and undertakings, including the bonds of executors, administrators, guardians and trustees, required by law to be filed in the office of the county clerk or surrogate, shall also be recorded in such offices respectively, in a book to be provided and kept in each of such offices, to be designated "book of official bonds and undertakings." The county clerk and surrogate's clerk shall respectively be entitled to the same fees for such recording, as are allowed to county clerks for recording conveyances, except that in counties where the surrogate's clerk receives a salary as full compensation for his services he shall not be entitled to any fee for such services.

County Law, § 247.

**Term of office of city supervisors.**

The term of office of each supervisor hereafter elected in a city shall, notwithstanding the provisions of such city charter, be two years, and a supervisor shall only be elected in such city each second year thereafter, except to fill vacancies.

General City Law, § 2.

**Removal of appointive officers in cities of the third class.**

No officer heretofore or hereafter appointed by the mayor of a city of the third class, or nominated and appointed by such mayor by or with the consent of the common council of such city, shall be removed or suspended from office without the approval of such mayor, such approval to be in writing and filed with the city clerk.

(General City Law, § 4, added by L. 1913, ch. 770. In effect May 27, 1913.)

**Elective officers in second class cities.**

There shall be elected by the qualified electors of the city, a mayor, comptroller, treasurer, president of the common council and four assessors. There shall be elected by the qualified electors of each ward of the city an alderman and a supervisor. There shall also be elected by the qualified electors of the city and of the wards thereof such other officers as may be provided by law.

Second Class Cities Law, § 11.

**Terms of office in second class cities.**

The term of office of each elective officer, unless elected to fill a vacancy then existing, shall commence on the first day of January next succeeding his election. The term of office of each appointive officer shall commence on the day succeeding his appointment unless a different date is specified in the certificate of appointment. The term of office of the mayor, comptroller, treasurer and president of the common council shall be two years. The term of office of alderman and supervisor shall be two years. The term of office of the assessors shall be four years, except that at the city election first held in the city after the same shall have become a city of the second class and the provisions of this chapter relating to the election of its officers shall have become applicable thereto, two of the assessors shall be elected for a term of two years and two for a term of four years. The term of office of the corporation counsel, city engineer, commissioner of public works, commissioner of charities and sealer of weights and measures shall be two years, unless sooner removed by the mayor. Where the term of office of an appointive officer is not specifically fixed by statute it shall be deemed to continue only during the pleasure of the officer, officers, board or body authorized to make the appointment.

Second Class Cities Law, § 13.

**Elections in second class cities.**

All elections of city officers, including supervisors and judicial officers of a city court or inferior local court, shall be held on the Tuesday succeeding the first Monday in November, and, except to fill vacancies, in an odd numbered year. All such elections shall be held at the same time and place as the general election held in such year, and shall be conducted in all respects in the same manner as general elections in cities are required to be conducted, and all the provisions of law relative to such elections shall be applicable to the election for officers of the city. In case of the failure to elect an elective city officer, except as otherwise provided herein, the office shall be deemed to be vacant for the purpose of choosing a successor and the vacancy shall be filled in the manner provided herein for the filling of a vacancy in such office happening otherwise than by expiration of term.

Second Class Cities Law, § 14.

**Vacancies in second class cities.**

If a vacancy shall occur, otherwise than by expiration of term, in an elective office of the city, including that of supervisor, the mayor shall appoint a



person to fill such vacancy. The person so appointed to such vacancy, if the office be not made elective by the constitution, shall hold office for the balance of the unexpired term. If the office be made elective by the constitution, the term of office of the person so appointed shall be until the commencement of the political year next succeeding the first annual election after the happening of the vacancy at which a successor can be elected, and a successor for the balance of the unexpired term, if any, shall be chosen at the next city election happening not less than twenty days after such vacancy occurs. If a vacancy shall occur in an appointive office of the city, otherwise than by expiration of term, the office, officers, board or body authorized to make appointment to office for the full term shall appoint a person to fill such vacancy for the balance of the unexpired term.

Second Class Cities Law, § 15.

#### **Official undertakings in second class cities.**

No person elected or appointed to a city office shall enter upon or continue in the discharge of the duties of his office until he shall have executed and filed with the city clerk the official undertaking, if any, required to be given and the same shall have been approved as to its form and validity by the corporation counsel and as to the sufficiency of the sureties by the mayor. All such undertakings shall be recorded in the office of the city clerk. In addition to the city officers required in this chapter, or otherwise by law, to give official undertakings, the common council may require any other city officer to give an official undertaking in such penal sum and with such conditions and sureties as it shall direct and approve. It may also, in a proper case, require an undertaking of any officer in addition to that required by law. The mayor shall examine the sufficiency of the proposed sureties of any officer or person from whom an official undertaking is required and may require such sureties to be examined on oath as to their property qualifications and liabilities. The deposition of each surety shall be reduced to writing, subscribed by him, certified by the officer administering the oath and annexed to and filed with the undertaking. In case any city officer shall fail to file the required official undertaking, if an elective officer, within thirty days after receipt of his certificate of election, and if an appointive officer, within fifteen days after receipt of notice of his appointment, the office shall be deemed to be vacant and the vacancy shall be filled in the manner herein provided for the filling of a vacancy therein happening otherwise than by expiration of term. The official undertaking of a city officer shall not be a lien upon real estate owned by him or the sureties on such undertaking.

Second Class Cities Law, § 18.

#### **Acting mayor in second class cities.**

Whenever there shall be a vacancy in the office of mayor, or whenever by reason of sickness or absence from the city the mayor shall be prevented from attending to the duties of the office, the president of the common council shall act as mayor and possess all the rights of mayor during such period of disability or absence. In case of a vacancy in the office of mayor he shall so act until noon of the first day of January next succeeding the election at which the mayor's successor shall be chosen. It shall not be lawful for the president of the common council when acting as mayor in consequence of the absence or sickness of the mayor to exercise any power of appointment or removal from



office unless such sickness or absence shall have continued for a period of thirty days, or to sign, approve or disapprove any ordinance or resolution unless such sickness or absence shall have continued for a period of at least nine days.

Second Class Cities Law, § 51.

**Police justice in second class cities.**

There shall be one justice of the court to be known as the police justice. Said office shall be filled by election by the electors of the city at the city election. The term of the police justice shall be six years and he shall receive an annual salary, to be fixed by the board of estimate and apportionment, provided, however, that if the city does not have or is not authorized by law to have more than one officer possessing the jurisdiction of a court of special sessions, such salary shall be fixed at not less than thirty-five hundred dollars per annum. If a police justice in any city shall have served as such for more than twelve consecutive years, the board of estimate and apportionment may, notwithstanding the provisions of section seventy-four of this chapter, increase the salary of such justice, from time to time, during his term of office, to take effect at the time of any such increase or from the first day of January of the current calendar year, as the board may determine. No person shall be eligible for election to the office of police justice unless he be an elector and has been an attorney of the supreme court of the state for five years. In case of the absence or disability of the police justice or of a vacancy in the office, any city judge or judge of the municipal court shall perform the duties of the office until the police justice returns, his disability ceases or the vacancy is filled.

Second Class Cities Law, § 181. Amended by L. 1914, ch. 85, in effect March 25, 1914.

**Police justice vacancy, how filled in second class cities.**

When a vacancy shall occur, otherwise than by expiration of term, in the office of police justice, the same shall be filled, for the balance of the unexpired term, at the next city election happening not less than thirty days after such vacancy occurs. Until such vacancy shall be so filled, the mayor may appoint a qualified attorney to fill the same, who shall hold office until the first day of January after the election at which his successor is elected.

Second Class Cities Law, § 182.

## **PART 8.**

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### **TOWN MEETINGS AND ELECTIONS, TENURE AND QUALIFICATION OF TOWN OFFICERS.**

#### **MISCELLANEOUS PROVISIONS.**



# TOWN MEETINGS<sup>1</sup>

## Town Meeting.

The electors of a town shall, biennially, on the second Tuesday of February, assemble and hold meetings at such place in the town as the electors thereof at their biennial town meeting shall, from time to time, appoint. If no place shall have been fixed for such meeting, the same shall be held at the place of the last town meeting in the town or election district, when town meetings of a town are held in election districts. The board of supervisors of any county may, by resolution, fix a time when the biennial town meetings in such county shall be held, which shall be either on some day between the first day of February and the first day of May, inclusive, or on the first Tuesday after the first Monday in November of an odd numbered year.

Town Law, § 40.

## Changing date of town meeting.

A town may change the date of its town meeting to the first Tuesday after the first Monday in November, known as general election day, by adopting a proposition therefor at a regular town meeting. Such proposition may be submitted by the town board on its own motion, and shall be submitted by such board on the written application of twenty-five taxable voters of the town. The proposition must be submitted, voted on, and the result canvassed as prescribed by section forty-eight. If it be adopted a certificate to that effect shall be filed by the town clerk within ten days thereafter in the office of the county clerk and also with the clerk of the board of supervisors. If the proposition be adopted the first town meeting shall be held on general election day in the next calendar year, and the terms of all officers, except justices of the peace and assessors, elected on the day of the adoption of the proposition shall expire on the last day of December in the next calendar year. Thereafter town meetings in such town shall be held biennially on general election day in the manner prescribed by this chapter, except that after five years from the first meeting, the town meeting may in like manner change from such general election to any other day authorized by law. The term of office of all officers, except justices of the peace, in a town which under this section changes its town meeting to general election day, shall be two years beginning the first day of January succeeding their election, except that the term of an assessor elected on such day shall be for two or four years, as the case may be, beginning the first day of January succeeding their election.

Town Law, § 41, as amended by L. 1910, ch. 271; L. 1920, ch. 14.

## Place of town meeting.

The electors of a town may, upon the application of fifteen electors therein, to be filed with the town clerk twenty days before a biennial town meeting is to be held, determine at such meeting, by ballot, where future town meetings shall be held. Where town meetings in any town are held in separate election districts, the electors of each district may, at a biennial town meeting, deter-

<sup>1</sup> L. 1918, ch. 6, § 1. The town board of any town in which a biennial town meeting is to be held in the year nineteen hundred and eighteen at a different time from the general election and not earlier than ten days after this act takes effect, and in which the town meetings are not now held in two or more election districts, may determine, by resolution, that the biennial town meeting in such year shall be held in the several existing election districts of the town and conducted therein by the inspectors of election thereof instead of by justices of the peace of the town. The provisions of sections sixty-five and sixty-six of the town law shall apply to such town meeting with the same force and effect as though town meetings were held in such town in its election districts pursuant to a vote of the electors at a town meeting.

mise by resolution where its future town meetings shall be held. If any place so designated shall thereafter, and before the close of the next biennial town meeting, be destroyed, or for any reason become unfit for use, or can not for any reason be used for such purpose, the town board shall forthwith designate some other suitable place for holding such town meeting in said town or election district, as the case may be. The provisions of this section shall not apply to towns in counties where the town meetings are held at the same time as general elections.

Town Law, § 42.

#### **Powers of town meeting.**

The electors of each town may, at their biennial town meeting:

1. Determine what number of constables, not exceeding five, and pound-masters shall be chosen in their town for the then ensuing two years; except that in a town of a county containing two hundred thousand inhabitants or less, according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, the number of constables to be so determined shall not exceed four,
2. Elect such town officers as may be required to be chosen;

Town Law, § 43, amended by L. 1917, ch. 40.

#### **Power of town meeting to fill vacancy in office of justice of the peace.**

If there shall be any vacancies in the office of justice of the peace of any town at the time of holding its biennial town meeting, persons shall then also be chosen to fill such vacancies, who shall hold their offices for the residue of the unexpired term for which they are respectively elected.

Town Law, § 44.

#### **Notices of town meeting.**

No previous notice need be given of the biennial town meetings; but the town clerk shall, at least twenty days before the holding of any special town meeting cause notice thereof, under his hand, to be posted conspicuously in at least four of the most public places in the town and to be published once in each week for two consecutive weeks immediately prior to such special town meeting in two newspapers published in such town, if there be but one newspaper published in such town then in such newspaper and in the newspaper, published in the county, having the largest circulation in such town or if there be no newspaper published in such town then in the two newspapers published in the county, having the largest circulation in such town; which notices shall specify the time, place and purposes of the meeting.

Town Law, § 47.

#### **Presiding officers of town meeting.**

The justice of the peace of each town shall attend every town meeting held therein, except where such town meetings are held at the time of the general elections and such of them as shall be present shall preside at such meeting, and see that the same is orderly and regularly conducted, and shall have the like authority to preserve order, to enforce obedience and to commit for disorderly conduct, as is possessed by the board of inspectors at a general election. If there be no justice of the peace at such meeting, then such person as shall be chosen for that purpose by the electors present shall preside and possess the like powers as justices, such person appointed shall take the constitutional oath of office before entering upon his duties as such presiding officer.

Town Law, § 49.

**Clerk of town meeting.**

The town clerk last before elected or appointed, or, if he be absent, such person as shall be chosen by the electors present, shall be the clerk of such town meeting, except when held at the time of a general election, and shall keep faithful minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by such meeting; such person chosen by the electors present shall take the constitutional oath of office before entering upon his duties as such clerk.

Town Law, § 50.

**Duration of town meeting.**

Town meetings shall be kept open for the purposes of voting in the daytime only, between the rising and setting of the sun, and, if necessary, may be continued by a vote of the meeting during the next day, and no longer, and be adjourned to another place not more than one fourth of a mile from the place where it was appointed.

Town Law, § 51.

**Proclamation of opening and closing polls of town meeting.**

Before the electors shall proceed to elect any town officer, proclamation shall be made of the opening of the polls, and proclamation shall in like manner be made of each adjournment and of the opening and closing of the polls until the election be ended.

Town Law, § 52.

**Qualification of elector at town meeting.**

An elector of a town shall not be entitled to vote by ballot upon any proposition for the raising or appropriation of money, or the incurring of any town liability, unless he or she is the owner of property in the town, assessed to him or her upon the last preceding assessment-roll thereof.

Town Law, § 53, as amended by L. 1913, ch. 124; L. 1920, ch. 59.

**Ballots for full term and vacancies.**

When the electors of any town are entitled to vote for a justice of the peace, to fill a vacancy caused otherwise than by expiration of term, each elector may designate upon his ballot the person intended for a full term and for a vacancy, and if there are two vacancies, they may be designated as the longer and shorter vacancy, and if three vacancies, the longer, shorter and shortest vacancy; and each person having the greatest number of votes with reference to each designation shall be deemed duly elected for the term or vacancy designated. If ballots are voted without designation, the first name on the ballot shall be deemed as intended for the full term of the office voted for, the second name for the longer vacancy, the third name for the shorter



vacancy and the fourth name for the shortest vacancy. The provisions of this section shall apply to new towns erected; and officers to be elected in such towns, except for a full term, shall be deemed elected to fill vacancies.

Town Law, § 56.

#### **Method of voting.**

All votes in town meetings upon any proposition to raise or appropriate money or incur any town liability exceeding five hundred dollars shall be by ballot; if five hundred dollars or less may be *viva voce*, unless ballot is required by the law authorizing the expenditure.

Town Law, § 57.

#### **Balloting.**

When the electors vote by ballot, except in towns where the biennial town meetings are held at the time of general elections, all the officers voted for shall be named in one ballot, which shall contain written or printed, or partly written or partly printed, the names of the persons voted for, and the offices to which such persons are intending to be elected, and shall be delivered to the presiding officers so folded as to conceal the contents, and shall be deposited by such officers in a box to be constructed, kept and disposed of, as near as may be, in the manner prescribed in the election law.

Town Law, § 58.

#### **Balloting on highway questions where village is separate road district.**

When any town shall have within its limits an incorporated village, constituting a separate road district, exempt from the supervision and control of the commissioners of highways of the town, and from payment of any tax for the salary or fees of said commissioners, and from payment of any tax for the opening, erection, maintenance and repair of any highway or bridge of said town, without the limits of said village, no residents of such village shall vote at any biennial or special election in such town for any commissioner of highways for said town, nor for or against any appropriation for the opening, laying out, maintenance, erection or repair of any highway or bridge in said town without the limits of said village. At the biennial elections in such towns, the names of candidates for the office of highway commissioner shall be printed on a different ballot from the one containing the names of candidates for other town offices. Such ballots shall be indorsed "commissioner of highways," and shall be deposited, when voted, in a separate ballot box, which also shall be marked "commissioner of highways." Such ballots and ballot box shall be furnished by the officers now charged by law with that duty at town elections.

Town Law, § 59.

#### **Transaction of business at town meeting not requiring a ballot.**

The business of the towns which requires a vote of the people otherwise than by ballot shall be commenced at twelve o'clock noon of the day of the biennial town meeting and completed without adjournment. No question involving the expenditure of money shall be introduced after two o'clock in the afternoon of the same day. All questions upon motion made at town meet-

ings shall be determined by the majority of the electors voting, and the officers presiding at such meeting shall ascertain and declare the result of the votes upon each question.

Town Law, § 60.

#### **Challenges.**

If any person offering to vote at any town meeting or upon any question arising at such town meeting shall be challenged as unqualified, the presiding officers shall proceed thereupon in the manner prescribed in the election law when challenges are made, which law, with its penalties, is made applicable thereto, and no person whose vote shall have been received upon such challenge shall be again challenged upon any other question arising at the same town meeting.

Town Law, § 61.

#### **Minutes of proceedings.**

The poll-list and minutes of the proceedings of every town meeting, subscribed by the clerk of such meeting, and by the officers presiding, shall be filed in the office of the town clerk within two days after such meeting and there preserved.

Town Law, § 62.

#### **Poll-list at town meeting.**

A poll-list shall be kept by the clerk of the town meeting referred to in sections fifty-eight and fifty-nine on which shall be entered the name of each person voting by ballot.

Town Law, § 63.

#### **Canvass of votes.**

At the close of the polls at any town meeting, the canvassers shall proceed to canvass the votes publicly at the place where the meeting was held. Before the ballots are opened they shall be counted and compared with the poll-list, and the like proceedings shall be had as to ballots folded together, and difference in number, as are prescribed in the election law. The void and protested ballots, and the voted ballots other than void and protested, shall be preserved and disposed of by the inspectors in the manner provided by sections three hundred and seventy-three and three hundred and seventy-four of the election law. The result of the canvass shall be read by the clerk to the persons there assembled, which shall be notice of the election to all voters upon the poll-list. The clerk shall also enter the result at length in the minutes of the proceedings of the meeting kept by him, and shall, within ten days thereafter, transmit to any person elected to a town office, whose name is not on the poll-list as a voter, a notice of his election.

Town Law, § 64.

#### **Town meeting by election districts.**

The electors of a town may determine by ballot at a biennial or special town meeting on the written application of twenty-five electors, that town meetings shall thereafter be held in the several election districts of their town, to be therein conducted by the inspectors of election thereof, instead of

the justices of the peace of the town; or may authorize the town board to divide such town into two or more joint election districts, as provided in this section. The town board of any town which has been so authorized may divide such town into two or more joint election districts, for the purpose of holding town meetings therein, but such districts shall be constituted by combining the election districts in such town. If the town board of any town shall divide such town into joint election districts in pursuance of this section, such board shall select from the inspectors of election for such town four inspectors residing therein, not more than two of whom shall belong to the same political party, for each of such election districts as so constituted. If a town shall hold its town meeting in more than one district, the inspectors of each of such districts shall appoint one poll clerk, and in the conduct of such meetings they shall have the same powers and duties as the justices of the peace and town clerk have at the biennial town meetings presided over by them. No town officer shall be required to make or render any report, statement or abstract at a town meeting when held in separate or joint election districts. At the close of the polls, the inspectors shall forthwith publicly canvass the ballots cast, and, without postponement or adjournment, make a full and true statement of the whole number so cast for each and every candidate for an office balloted for, and of the whole number of votes for and against every question or proposition voted upon at such town meeting. The void and protested ballots, and the voted ballots other than void and protested, shall be preserved and disposed of by the inspectors in the manner provided by section three hundred and fifty three of the election law. Such statement shall be made in the same form as statements by such inspectors of the votes cast at general elections, and shall be signed by the inspectors and delivered by one of their number, selected by them, for that purpose, to the justices of the peace and town clerk of the town, who shall receive and receive the same at the office of the town clerk, on the day next following the town meeting at ten o'clock in the forenoon. Such justices and clerk shall then and there recanvass such votes from the statements of the inspectors of the several separate or joint election districts so delivered to them, and thereupon appoint in writing the inspectors of election, and read and enter the results in the same manner as required of them at the close of the canvass of a town meeting presided over by them. When the electors of a town have determined to hold their town meetings in separate or joint districts, they may again, upon the written application of twenty-five electors, at a biennial town meeting, determine by ballot to return to the former system of holding but one poll at their town meetings, and thereupon their town meetings shall be held at but one polling place in said town, but such changes shall not be made oftener than once in five years.

Town Law, § 85.

**Transaction of business in town meeting by election districts not requiring a ballot.**

Any proposition to be submitted to and voted upon by the electors of a town at any town meeting, which is not required to be voted upon by ballot, may be submitted to the electors of the town voting in separate or joint election districts of the town meeting, but the vote upon any such proposition shall be taken by a division of the electors present and voting thereon; and the inspectors shall count the number of electors so voting in favor of such propo-

sition, and the number so voting against the same, and shall enter in the statement of the result of the town meeting held in such district a statement of the proposition so voted upon, and the number of votes so cast in favor of and against the same and certify with the statement that they are required to certify and return to the justices of the peace and town clerk of the town. No such proposition shall be so voted upon unless notice that such vote will be taken has been published by the town clerk at least one week before the town meeting, in a newspaper published in the town, if any such is published therein, and such notice shall also be posted for the same length of time at the place where the poll of the town meeting is to be held, in each separate or joint election district, and shall be publicly read by the inspectors to the voters present before any such vote is taken. Any elector of the town may, by a written application filed with the town clerk at least ten days before the town meeting is to be held, require such notice to be given by the town clerk. Every such proposition shall be submitted to a vote, commencing at the hour of twelve, noon, and continuing until all such propositions have been voted upon, and every such proposition shall be submitted to the vote of the electors of the town at the poll of every separate or joint election district in the town.

**Town Law, § 66.**

**Town meeting at time of general election.**

If, in any town, the biennial town meeting is held at the same time as the general election, such town meeting shall be held in the election districts of such town, and be conducted by the inspectors of election thereof. At the close of the polls at any such town meeting, the inspectors shall proceed to canvass the votes for the candidates for the several town offices in the election districts where such town meeting was held, in the same manner as the votes for other candidates cast at the general election are canvassed. They shall make a statement of the whole number of votes cast for each candidate for a town office and deliver the same to one of the justices of the peace of the town, and, on the Thursday succeeding such town meeting, such votes shall be recanvassed, the additional inspectors of election in each district shall be appointed, and the result of the election declared as provided by section sixty five of this chapter. In case of a contest or other proceeding in which the validity of the election of a town officer in any such town is in controversy, the ballots cast at any town meeting and election may be examined and accounted, as provided by law, in case of other officers elected at general elections.

**Town Law, § 67.**

**Ballots at town meeting held at time of general election.**

At town meetings in towns held at the same time as general elections, the names of all candidates for town offices shall be voted for in the same manner and on the same ballot as candidates for other officers voted for thereat.

**Town Law, § 68.**

**Qualification of voter at town meeting held at time of general election.**

At a town meeting held at the time of a general election no person shall be allowed to vote for candidates for town officers who is not registered and entitled to vote at such general election.

**Town Law, § 69.**

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### Town officers.

Except as otherwise provided in this section, there shall be elected at the biennial town meeting in each town by ballot, one supervisor, one town clerk, two justices of the peace, two assessors, one collector, one or two overseers of the poor, not more than five constables and one superintendent of highways excepting that in towns which shall have adopted a resolution that thereafter such town superintendent shall be appointed by the town board, pursuant to the provisions of section forty one of the highway law, he shall be appointed as therein prescribed. Provided, however, that in towns in a county containing two hundred thousand or less inhabitants, according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, the town superintendent of highways hereafter elected or appointed shall hold office for the term of four years; and provided further that in a town of any such county not more than four constables shall be hereafter elected at the biennial town meeting. At the first biennial town meeting in each town, after this section as hereby amended takes effect, two assessors shall be elected to hold office for two years and one assessor to hold office for four years. Of the two assessors chosen at any subsequent biennial town meeting in each town, one shall be elected to hold office for two years and one to hold office for four years.

Town Law, § 80, as amended by L. 1910, ch. 271; L. 1918, ch. 346; L. 1917, ch. 44.

### Eligibility of town officers.

Every elector of the town shall be eligible to any town officer, except that inspectors of election shall also be able to read and write. But no county treasurer, superintendent of the poor, school commissioner, trustee of a school district or United States land commissioner, shall be eligible to the office of supervisor of any town or ward in this state.

Town Law, § 81.

### Term of office.

Supervisors, town clerks, town superintendents of highways, collectors, overseers of the poor, inspectors of election and constables, when elected, shall hold their respective offices for two years. The terms of office of assessors shall be two years for one assessor and four years each for two assessors. But whenever there is or shall be a change in the time of holding town meetings in any town persons elected to such offices at the first biennial town meeting held after such change has been authorized as provided by law, shall enter upon the discharge of their duties at the expiration of the term of their predecessors and serve until the next biennial town meeting thereafter or until their successors are elected and have qualified, except that the assessor elected for four years shall serve until the second biennial town meeting thereafter, or until his successor is elected and has qualified. Whenever the time of holding town meetings in any town is changed to the first Tuesday after the first Monday in November, except when changed as provided in section forty-one of this chapter, the town officers elected thereto shall take office on the first day of January succeeding their election. Except that the collector elected at such town meeting shall take office immediately upon his election and qualification as prescribed by law. Except as otherwise provided in this section, in case the time of the holding of town meetings in any county is changed by resolution of the board of supervisors of the county to the first Tuesday after the first Monday in November, all town officers in any town of such county elected at the first biennial town meeting held after the adoption of such resolution shall hold office until the first day of January succeeding the biennial town meeting first held pursuant to such resolution. No resolution changing the time of holding town meetings to the first Tues

day after the first Monday in November shall be effectual to dispense with the holding of the first biennial town meeting after the adoption of such resolution at the time fixed when such resolution was adopted. But the collector in each town shall complete the duties of his office in respect to the collection of taxes, and the payment and return thereof, upon any warrant received by him during his term of office, notwithstanding the fact that his successor has entered upon the duties of his office.

Town Law, § 82, as amended by L. 1910, ch. 271; L. 1913, ch. 231; L. 1918, ch. 372.

#### **Oath of office.**

Every person elected or appointed to any town office, except justice of the peace, shall before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, take and subscribe before some officer authorized by law to administer oaths in his county, the constitutional oath of office, and such other oath as may be required by law, which shall be administered and certified by the officer taking the same without reward, and shall within eight days be filed in the office of the town clerk, which shall be deemed an acceptance of the office, and a neglect or omission to take and file such oath or a neglect to execute and file within the time required by law, any official bond or undertaking, shall be deemed a refusal to serve, and the office may be filled as in case of vacancy.

Town Law, § 83.

#### **Resignation of town officer.**

Any three justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer of their town, and whenever they shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town.

Town Law, § 84.

#### **Town clerks' undertakings.**

Every town clerk hereafter elected or appointed shall, within thirty days after entering upon the duties of his office, make and deliver to the supervisor of the town his undertaking, with such sureties as the town board shall prescribe, in a penal sum not exceeding one thousand dollars, to be determined by the town board, to the effect that he will well and faithfully discharge his official duties as such town clerk, and that he will well and truly keep, pay over and account to the proper board, officer or commission of the town, state or county, and account for, all moneys and property going into his hands in his official capacity, and such undertaking shall, after its execution, be presented by the supervisor to the town board for their approval as to its form and the sufficiency of the sureties thereon. Until such undertaking shall have been approved, none of the moneys, books, documents, papers or property of the town, county or state shall be turned over or delivered to such town



clerk elect. After the approval of such undertaking, the supervisor shall file the name in the office of the county clerk.

Town Law, § 92 a, as added by L. 1912, ch. 136.

#### **Duty of town clerk.**

It shall be the duty of the town clerk, annually, between the fifteenth day of November, and the fifteenth day of December, to transmit to the tax commission a list containing the names of each supervisor, town superintendent, justice of the peace, town clerk, assessor and collector, showing his post office address, the date of his appointment or election and the expiration of his term of office.

Town Law, § 92-a, as added by L. 1917, ch. 592.

**Town clerk must transmit certificate of election of justice of the peace to county clerk.**

The town clerk of each town shall, within ten days after the election of a justice of the peace has been declared, transmit to the clerk of his county a certificate showing the result of such election under his hand, which shall be presumptive evidence of the fact therein certified.

Town Law, § 94.

#### **Supervisor's undertaking.**

Every supervisor hereafter elected or appointed shall, within thirty days after entering upon his office, make and deliver to the town clerk of the town his undertaking, with such sureties as the town board shall prescribe, to the effect that he will well and faithfully discharge his official duties as such supervisor, and that he will well and truly keep, pay over and account for all moneys and property, including the local school fund, if any, belonging to his town and coming into his hands as such supervisor; and such undertaking shall, after its execution, be presented to the town board for their approval as to its form, and the sufficiency of the sureties therein, and until the same shall be so approved, none of the moneys, books, documents, papers or property of the town shall be turned over or delivered to such supervisor elect.

Town Law, § 100.

#### **Terms of supervisors in certain counties.**

In each of the counties of this state containing over three hundred thousand inhabitants and less than six hundred thousand inhabitants as now appears or as may hereafter appear by the latest federal or state enumeration of inhabitants, and within which is, or may be, a city divided into wards from which supervisors are elected for a longer term than one year, the term of office of supervisors of the respective towns shall be as long as the term of office of the city supervisors. The terms of office of all such supervisors shall begin on the first day of January next succeeding their election.

Town Law, § 102.

#### **Classification of justices of the peace.**

There shall be four justices of the peace in each town, divided into two classes, two of whom shall be elected biennially. Such justices shall hold office for a term of four years commencing on the first day of January succeeding their election. In each county in the state having within its boundaries a city having a population of not less than three hundred thousand and not more than four hundred thousand, according to the last federal enumeration, the justices of the peace heretofore elected shall hold their offices for the terms for which they were respectively

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electd, but, except as hereinafter provided, no successors to them shall be elected. In each of said counties there shall be elected at the biennial town meeting in nineteen hundred and three, two justices of the peace whose terms of office shall begin on the first day of January succeeding their election, and who shall hold office for the term of four years. At the biennial town meeting in each of said counties held in nineteen hundred and five, there shall be elected two justices of the peace whose terms of office shall begin January first, succeeding their election, and who shall hold office for four years. At each biennial town meeting thereafter, there shall be elected two justices of the peace for the full terms of four years, commencing on the first day of January succeeding the town meeting.

Town Law, § 103.

### Justice of the peace in new towns.

If there be one or more justices of the peace residing in a new town, when erected, they shall be deemed justices of the peace thereof, and shall hold their offices according to their respective classes; and only so many shall be elected as shall be necessary to complete the number of four for the town.

Town Law, § 104.

### When more than four justices of the peace may hold office.

If by the erection of a new town, or the annexation of a part of one town to another, there shall at any time be more than four justices of the peace residing in any town, they shall hold and exercise their offices in the town in which they reside, according to their classes respectively; but on the expiration of the term of office of two or more justices, being in the same class, only one person shall be elected to fill the vacancy in that class. Whenever by the erection of a new town, or the annexation of a part of one town to another, any town shall be deprived of one or more justices of the peace, by their residence being within the part set off, the inhabitants of such town shall, at its next annual town meeting, supply the vacancy so produced in the classes to which such justices belong.

Town Law, § 105.

### Justice's undertaking and oath.

Every justice of the peace elected or appointed in any of the towns or cities of this state, except the city of New York and any city whose charter requires such officer to give a bond or undertaking, shall, before he enters upon the duties of his office, execute an undertaking with two sureties to be approved by the supervisor of the town, or the town clerk thereof, where the justice of the peace is also supervisor of the town, or the common council of the city in which the justice shall reside, to the effect that he will pay over on demand, to the officer, person or persons entitled to the same, all moneys received by him by virtue of his office, and file the undertaking in the office of the clerk of the city or town in which he resides. Every justice shall also, on or before the fifteenth day of January next succeeding his election, file with the county

clerk a certificate of the clerk of the city or town in which he resides, that he has filed such undertaking. Such justice of the peace shall take and subscribe before some officer authorized by law to administer oaths in his county, the constitutional oath of office, upon blanks to be furnished by the county clerk. Such oath shall be in duplicate, one of which shall be filed in the office of the county clerk and one in the office of the town clerk. If elected or appointed to fill a vacancy, at the time existing, or in any new town, he shall file such undertaking and certificate and take the oath of office, and enter upon the duties thereof, within fifteen days after notice of his election or appointment. No justice of the peace shall take his oath of office until he shall have filed such certificate with the county clerk.

Town Law, § 106.

#### **Refusal to serve as pound-master.**

If any person chosen or appointed to the office of pound-master shall refuse to serve, he shall forfeit to the town the sum of ten dollars.

Town Law, § 110.

#### **Undertaking of town superintendent of highways.**

Every town superintendent of highways shall, within ten days after notice of his election or appointment, execute an undertaking with two or more sureties to be approved by the supervisor of his town, to the effect that he will faithfully discharge his duties as such commissioner, which undertaking shall be delivered to the supervisor, and filed by him in the office of the town clerk within ten days thereafter.

Town Law, § 111.

#### **Overseers of the poor.**

The electors of each town may, at their biennial town meeting, determine by resolution whether they will elect one or two overseers of the poor, and the number so determined upon shall be thereafter biennially elected for a term of two years. Whenever any town shall have determined upon having two overseers of the poor, the electors thereof may determine by a resolution at a biennial town meeting to thereafter have but one, and if they so determine thereafter no other overseer shall be elected or appointed until the term of the overseer continuing in office at the time of adopting the resolution shall expire or become vacant, and the overseer in office may continue to act until his term shall expire or become vacant. The electors of any town may, at any biennial or regularly called special town meeting on the application of at least twenty-five resident taxpayers whose names appear upon the then last preceding town assessment roll, adopt by ballot a resolution that there shall be appointed in and for such town one overseer of the poor. If a majority of the ballots so cast shall be in favor of appointing an overseer of the poor, no overseer of the poor shall thereafter be elected in such town except as hereinafter provided, and the overseers of the poor of such town elected at the town meeting at which such resolution is adopted or who shall then be in office shall continue to hold office for the terms for which they were respectively chosen, and within thirty days before the expiration of the term of office of such elected overseer whose term expires latest, the town board of such town shall meet and appoint one overseer of the poor for such town, who shall hold office for one year from the first day of May next after his appoint-

ment; and annually in the month of April in each year thereafter an overseer of the poor shall be appointed by the town board of such town for the term of one year from the first day of May next following such month of April. Each overseer of the poor so appointed shall execute and file with the town clerk an official undertaking in such form and for such sum as the town board may by resolution require and approve. An overseer of the poor, so appointed, shall not hold any other town office during the term for which he is so appointed, and if he shall accept an election or appointment to any other town office he shall immediately cease to be an overseer of the poor. If a vacancy shall occur in the office of an overseer of the poor, so appointed, such vacancy shall be filled by the town board, by appointment, for the balance of the unexpired term. The compensation of an overseer of the poor so appointed, shall be fixed by the town board of such town, but shall not exceed, in any one year, the sum of one thousand dollars, and shall be a town charge. At any subsequent town meeting after the expiration of three years from the adoption of a resolution by any town to appoint an overseer of the poor, the electors of the town may determine by ballot to thereafter elect one or more overseers of the poor, and if they determine so to elect, then at the next biennial town meeting thereafter one or more overseers of the poor shall be elected in pursuance of the laws regulating the election of overseers of the poor, and the term or terms of the overseer or overseers first so elected shall commence upon the expiration of the term of office of the overseer of the poor last theretofore appointed in pursuance of law, and shall expire as though each such term commenced at the time of election; and their successors shall thereafter be elected in pursuance of law.

In each town having a population of twenty thousand or over, the town board may fix the compensation of the overseer of the poor at not to exceed twelve hundred dollars per year, and which shall be a town charge; and in any town where there is more than one overseer of the poor, one of whom shall be a resident of a village of over ten thousand inhabitants, in fixing compensation the town board may take this into consideration, and a larger salary may be fixed for the overseer of the poor so residing in said village.

The compensation so fixed shall be taken and accepted by such overseer of the poor in lieu of any per diem or fees from the town from the time such salary shall go into effect.

Town Law, § 112; amended by L. 1912, ch. 203.

#### **Undertaking of overseer of the poor.**

Every person elected or appointed overseer of the poor in any town shall, within ten days after being notified of his election or appointment, execute an undertaking with one or more sureties, to be approved by the supervisor of his town, to the effect that he will faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer, which undertaking shall be delivered to the supervisor and filed by him in the office of the town clerk within ten days thereafter.

Town Law, § 113.

#### **Collector's undertaking.**

Every person elected or appointed to the office of collector, before he enters upon the duties of his office, and within eight days after he receives notice of the amount of taxes to be collected by him, shall execute an undertaking with two or more sureties, to be approved by the supervisor, to the effect that he will well and faithfully execute his duties as collector, pay over all moneys received by him, and account in the manner and within the time provided by

law for all taxes upon the assessment-roll of his town delivered to him for the ensuing year, and shall deliver such undertaking to the supervisor of the town.

Town Law, § 114.

**Filing and lien of collector's undertaking.**

The supervisor shall, within six days thereafter, file the undertaking with his approval indorsed thereon, in the office of the county clerk, who shall make an entry thereof in a book to be provided for the purpose, in the same manner as judgments are entered of record, and every such undertaking shall be a lien on all the real estate held jointly or severally by the collector or his sureties within the county at the time of the filing thereof, and shall continue to be such lien, until its condition, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied. Upon a settlement in full between the county treasurer and collector, a certificate of payment shall be executed in duplicate by the county treasurer, one copy to be delivered to the collector and one copy to be filed by the county treasurer in the office of the county clerk, and said county clerk shall then enter a satisfaction thereof in the book in which the filing of said bond is entered and opposite said entry of filing.

Town Law, § 115.

**Constable's undertaking.**

Every person elected or appointed to the office of constable shall, before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, execute in the presence of the supervisor or town clerk of the town, with at least two sufficient sureties, to be approved by such supervisor or town clerk, an undertaking to the effect that such constable and his sureties will pay to each and every person, who may be entitled thereto, all such sums of money as the constable may become liable to pay on account of any execution which shall be delivered to him for collection; and also pay each and every person for any damages which he may sustain from or by any act or thing done by such constable by virtue of his office. The supervisor or town clerk shall indorse on the undertaking his approval of the sureties therein named, and shall cause the same to be filed in the office of the town clerk within ten days thereafter.

Town Law, § 116.

**Fence viewers.**

The assessors and town superintendent of highways elected in every town shall, by virtue of their offices, be fence viewers of their town.

Town Law, § 121.

**Police justices in certain towns.**

In any town of this state containing one or more incorporated villages of the aggregate population of at least eight thousand inhabitants, the office of police justice shall be created upon the adoption of a proposition therefor at any regular town election. The term of office of said police justice shall be four years. Such police justice shall receive no fees, but shall be paid an annual salary to be fixed by resolution of the town board of such town, which salary shall not be increased nor diminished during his term of office.

Town Law, § 122, as added by L. 1909, ch. 528. (A different section 122 was added by L. 1909, ch. 147.)

**Creation of office of police justice.**

The town board of any town specified in section one hundred and twenty-two of this article may, and on the petition of twenty-five electors qualified to vote on the proposition shall, cause to be submitted at any regular town meeting or town election a proposition for the creation of such office of police justice in such town. Should such provision be adopted, then within ten days thereafter the town board of such town shall appoint a competent elector of such town and a resident of the portion thereof lying without the corporate limits of the village or villages therein, police justice, the person so appointed shall hold office until the thirty-first day of December next after the regular town election next succeeding that at which such proposition shall have been adopted. At the regular town election next succeeding that at which such proposition shall have been adopted a police justice shall be elected.

Town Law, § 124.

**Power of town board to fill vacancies.**

When a vacancy shall occur or exist in any town office, the town board or a majority of them may, by an instrument under their hands and seals, appoint a suitable person to fill the vacancy, and the person appointed, except justices of the peace, shall hold the office until the next biennial town meeting. In a county having a population of less than two hundred and fifty thousand adjoining a city of the first class having a population of one million or more, all persons appointed to the office of assessor shall hold the office for the balance of, and until the expiration of, the term for which the assessor who held such office in which such vacancy is thus filled, was elected. A person so appointed to the office of justice of the peace shall hold the office until the next biennial town meeting, unless the appointment shall be made to fill the vacancy of an officer whose term will expire on the thirty-first day of December next thereafter, in which case the term of office of the person so appointed shall expire on the thirty-first day of December next succeeding his appointment. The board making the appointment shall cause the same to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed. A copy of the appointment of a justice of the peace shall also be filed in the office of the county clerk before the person appointed shall be authorized to act.

Town Law, § 130, amended by L. 1921, ch. 448.

**Establishment of board of town auditors.**

The electors in each of the towns may, on the application of twenty freeholders residing therein, at any biennial town meeting, determine by ballot whether there shall be elected, at the next succeeding biennial town meeting, held in town, a board of town auditors, in and for the town, independent of the town board, in the manner and under the restrictions hereinafter prescribed.

Town Law, § 150.

**Election of town auditors.**

If a majority of the ballots so cast shall be in favor of electing a board of town auditors there shall be elected at the next succeeding biennial town meeting, and at every biennial town meeting held thereafter, until otherwise determined, three town auditors, who shall form the board of town auditors of the town, whose term of office shall be two years.

Town Law, § 151.



**Vacancies in board of town auditors.**

The supervisor of the town shall appoint some suitable and competent person to fill any vacancy occurring in the board of town auditors until the next biennial town meeting.

Town Law, § 156.

**Abolishment of board of town auditors.**

At any subsequent town meeting, after the expiration of five years from the determination to elect a board of town auditors, the electors of the town may determine by ballots to abolish such board in the same manner as they determined to establish such board; and thereupon such board shall be abolished.

Town Law, § 157.

**Election of board of trustees of burial grounds.**

The electors of any town may, at a biennial town meeting, choose three persons to act as a board of trustees of any burial grounds within the limits of and belonging to the town, as such electors may designate, and direct the supervisor of the town to convey by deed to such board of trustees, and their successors in office, for the purposes hereinafter mentioned, the lands already composing such grounds; and also any other lands that may be hereafter acquired for the purpose of enlarging such grounds. Such trustees shall hold office for a term of two years. Such boards of trustees and all boards of trustees heretofore created, pursuant to chapter forty six of the laws of eighteen hundred and seventy-three, are hereby declared to be corporate bodies, under the name of the board of trustees of the cemetery for which they are chosen respectively, capable of suing and being sued as such, and of taking and holding gifts and bequests of personal property for the care and improvement of the cemeteries under their charge, or any lot therein.

Town Law, § 330.

**Term of office of trustees.**

The term of office of trustees so appointed shall be fixed by the appointing officer and he shall fill any vacancy that may occur in said board. The trustees shall each furnish a bond satisfactory to the appointing officer for the faithful performance of their duties, and shall render an annual report to the financial officer of the municipality of all receipts and disbursements of money and of all investments of surplus funds to the credit of the burying grounds in their charge.

Town Law, § 335.

**Erection and discontinuance of pounds.**

Whenever the electors of any town shall determine, at a biennial town meeting, to erect one or more pounds therein, and whenever a pound shall now be erected in any town, the same shall be kept under the care and direction of a pound-master, to be elected or appointed for that purpose. The electors of any town may, at a biennial town meeting, discontinue any pounds therein.

Town Law, § 410.

**Election of pound-masters.**

Pound-masters may be elected either (1) by ballot; (2) by ayes and noes, or (3) by the rising or dividing of the electors, as the electors may determine.

Town Law, § 411.

# TOWN MEETINGS IN COUNTIES OF BETWEEN FOUR HUNDRED THOU- SAND AND SIX HUNDRED THOU- SAND INHABITANTS.

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## **Time of meeting; certificates of nomination.**

Town meetings at which town officers shall be elected in any county of the state having a population of over four hundred thousand inhabitants and less than six hundred thousand inhabitants, according to the last state or federal enumeration, shall be held biennially on the first Tuesday after the first Monday in November in each odd-numbered year, at the same places as general elections in such towns are held. No person shall be entitled to vote at any such town meeting or election unless he is registered and entitled to vote at the general election held at the same time that such town meeting is held. All elective town officers shall be elected at such general election in the same manner and on the same ballot as other officers who may be elected thereat. Certificates of nomination of candidates for a town office in any such towns shall be in duplicate, one of which shall be filed with the town clerk of the town, and the other with the commissioner of elections of the county wherein such town is located, and if nominated by a political party, not earlier than the tenth Tuesday and not later than six days after the ninth Tuesday before such town meeting and election is held, or if independent nominations, not earlier than the ninth Tuesday and not later than two days after the eighth Tuesday before such town meeting and election is held. The ballots prepared by the commissioner of elections shall include the names of all candidates nominated for town officers in any such towns.

Town Law, § 520, amended by L. 1918, ch. 300.

## **Ballots.**

Ballots for the submission of questions or propositions relating to town affairs shall be prepared and furnished by the officer charged with the duty of preparing the official ballots for candidates, as provided in the election law. Such ballots shall be distributed by the town clerk at the same time and in the same manner as are other ballots to be voted at a general election. It shall be the duty of each town clerk in any such county to file with the commissioner of elections a certified copy of all town propositions to be submitted to the electors of his town at the next biennial town meeting held pursuant to this article. An additional ballot box shall be provided, marked "box for town propositions," in which shall be deposited the ballots cast on town propositions or questions, except in election districts where the use of a voting machine has been authorized. In all such districts it shall be lawful for the

town propositions to be printed on the same ballots with proposed amendments to the constitution or other propositions.

Town Law, § 521.

#### Canvass of votes.

At the close of the polls at any such biennial town meeting and election in any such town the inspectors of election shall proceed to canvass the votes for the candidates for the several town offices, and for and against all town propositions duly submitted to the voters of such town in the election districts where such meeting and election was held, in the same manner as the votes for other candidates and propositions cast at the general election are canvassed. The inspectors of election shall perform the same duties with respect to the canvass of the vote and the filing of the returns thereof for such town officers, and all other matters pertaining to the determination of the result of the election as is now provided by law, with respect to the canvass of the votes cast at a general election. All provisions of law relating to the canvass of votes cast at a general election by the county board of canvassers, to the correction of clerical errors, the review of the determination by such board of canvassers, and all other matters pertaining to the canvass of the votes cast at a general election, shall be applicable to the canvass of all votes for such town officers and propositions. The secretary of the board of county canvassers of any such county shall transmit to the clerk of each town therein a certified copy of the determination of the county board of canvassers as to the election of each town officer and proposition voted for at the town meeting and election held in such town. The secretary of the board of county canvassers of any such county shall transmit to each person declared by the board of canvassers thereof to be elected to a town office therein, a certificate of the determination of such board. No list of nominations of candidates for town officers to be filed at any such biennial town meeting and election, or the result of the official canvass of the vote cast thereat, shall be required to be published. All the provisions of the election law not inconsistent with the provisions of this article shall apply to and govern town meetings and elections held as provided herein.

Town Law, § 522.

#### Officers to be elected.

There shall be elected at the town meeting and election to be held in each town in any such county on the first Tuesday after the first Monday of November, in the year nineteen hundred and nine, and biennially thereafter one supervisor, one town clerk, three assessors, one collector one or two overseers of the poor and not more than five constables for the term of two years commencing on the first day of January, succeeding their election. There shall also be elected a town superintendent of highways unless the town shall have adopted a resolution that thereafter the town superintendent shall be appointed by the town board as provided in section forty one of the highway law. The town superintendent's term of office shall begin on the first day of January succeeding his election and be for a term of two years. There shall also be elected at such town meeting and election and biennially thereafter two justices of the peace for terms of four years, beginning on the succeeding first day of January. All persons elected at such biennial town meeting to the office of justice of the peace to fill a vacancy shall take office on the first day

of January next succeeding their election, and all persons appointed by a town board or other competent authority to fill a vacancy in the office of justice of the peace shall serve until and including the thirty-first day of December following the next succeeding biennial town meeting. The collectors elected at such town meetings and elections shall enter upon the discharge of their duties after their predecessors have completed the duties of their offices, in respect to the collection of taxes and returns thereof, as now prescribed by law.

Town Law, § 523, as amended by L. 1918, ch. 372.

## TOWN MEETINGS IN COUNTIES OF BETWEEN ONE HUNDRED AND FIFTY THOUSAND AND ONE HUN- DRED AND SIXTY THOUSAND IN- HABITANTS.

### **Time of meeting; certificates of nomination.**

The next town meeting or election at which town officers shall be elected in any county of the state having a population of over one hundred and fifty thousand and less than one hundred and sixty thousand inhabitants, according to the state enumeration next preceding April twenty eight, eighteen hundred and ninety eight, shall be held on the first Tuesday after the first Monday in November, in the year nineteen hundred and nine, and biennially thereafter at the same places as general elections in such towns are held. No person shall be entitled to vote at any such town meeting and election unless he is registered and entitled to vote at the general election held at the same time that such town meeting is held. All elective town officers shall be elected at such general election in the same manner and on the same ballot as other officers who may be elected thereat. Certificates of nominations of candidates for town office in any such towns shall be in duplicate, one of which shall be filed with the town clerk of the town, and the other with the board of elections of the county wherein such town is located, and if nominated by a political party, not earlier than the tenth Tuesday and not later than six days after the ninth Tuesday before such town meeting and election is held or, if independent nominations, not earlier than the ninth Tuesday and not later than two days after the eighth Tuesday before such town meeting and election is held. The ballots prepared by the board of elections shall include the names of all candidates nominated for town offices in any such towns. The board of elections shall apportion to and charge the several towns in any such counties with their respective proportionate shares of the expense of the preparation and distribution of such ballots.

Town Law, § 530, as amended by L. 1918, ch. 300.

Ballots for the submission of questions or propositions relating to town affairs shall be prepared and furnished at the expense of the town by the clerk thereof, as provided in the election law. Such ballots shall be distributed by the town clerk at the same time and in the same manner as are other ballots to be voted at a general election.

Town Law, § 531.

**Canvass of votes.**

At the close of the polls at any such biennial town meeting and election in any such town the inspectors of election shall proceed to canvass the votes for the candidates for the several town offices, and for and against all town propositions duly submitted to the voters of such town in the election districts where such meeting and election was held, in the same manner as the votes for other candidates and propositions cast at the general election are canvassed. The inspectors of election shall perform the same duties with respect to the canvass of the vote and the filing of the returns thereof for such town officers, and all other matters pertaining to the determination of the result of the election, as is now provided by law with respect to the canvass and return of the votes cast for other officers elected at the general election held at the time of the holding of such town meeting and election. The county board of canvassers shall canvass the votes cast at any such town meeting and election for town officers and propositions voted upon at any such town meeting and election, in the same manner as is provided by law for the canvass of votes cast at general elections. All provisions of law relating to the canvass of votes cast at a general election by the county board of canvassers, to the correction of clerical errors, the review of the determination by such board of canvassers, and all other matters pertaining to the canvass of the votes cast at a general election, shall be applicable to the canvass of all votes for such town officers and propositions. The county clerk of any such county shall transmit to the clerk of each town therein a certified copy of the determination of the county board of canvassers as to the election of each town officer and proposition voted for at the town meeting and election held in such town. The county clerk of any such county shall transmit to each person declared by the board of canvassers thereof to be elected to a town office therein a certificate of the determination of such board. Upon the receipt by the town clerk of a certified copy of the certificate of the determination of the county board of canvassers hereinbefore mentioned, the town clerk and justices of the peace shall meet and appoint in writing the inspectors of election as required by law. No list of nominations of candidates for town offices to be filled at any such biennial town meeting and election, or the result of the official canvass of the votes cast thereat, shall be required to be published. All the provisions of the election law not inconsistent with the provisions of this article shall apply to and govern town meetings and elections held as provided herein.

Town Law, § 532.

**Officers to be elected.**

There shall be elected at the town meeting and election to be held in each town in any such county on the first Tuesday after the first Monday in November, in the year nineteen hundred and nine, and biennially thereafter, one supervisor, one town clerk, three assessors, one collector, one or two overseers of the poor, not more than five constables, and two inspectors of election for each election district, all of whom shall hold office for a term of two years beginning on the first day of January next succeeding. There shall also be elected a town superintendent of highways unless the town shall have adopted a resolution that thereafter the town superintendent shall be appointed by the town board as provided in section forty-one of the highway law. The town superintendent's term of office shall begin on the first day of January succeeding his election and be for a term of two years. There shall also be elected at such town meeting and election and biennially thereafter, two justices of the peace for terms of four years, beginning on the succeeding first day of January. Except that the collector elected at any such town meeting in nineteen hundred and eleven and biennially thereafter shall take office immediately upon his election and qualification as prescribed by law. But the collector in any such town for the current term shall complete the duties of his office in respect to the collection of taxes, and the payment and return thereof, upon any warrant received by him during his term of office, notwithstanding the election of his successor.

\* Town Law, § 533, as amended by L. 1918, ch. 372.



## TOWN MEETINGS IN COUNTIES OF BETWEEN ONE HUNDRED AND TWENTY THOUSAND AND ONE HUNDRED AND THIRTY THOUSAND INHABITANTS.

### **Time of meeting; certificates of nomination.**

The town meetings to be held in any county of the state, having a population of more than one hundred and twenty thousand and less than one hundred and thirty thousand inhabitants, according to the federal enumeration next preceding, March fifth, nineteen hundred and one, on the first Tuesday after the first Monday of November in the year nineteen hundred and nine, and biennially thereafter, shall be held at the same time and place at which the general elections in such towns are held. No person shall be entitled to vote at any such town meeting and general election unless he is registered and entitled to vote at the general election held at the same time that such town meeting is held. All elective town officers shall be elected at such general election in the same manner and on the same ballot as other officers who may be elected thereat. The names of the nominees of each party or independent body for town officers shall be printed in said party's column or the column for independent nominations, after the names of the nominees for general officers. Certificates of nomination of candidates for town officers in any such towns shall be filed with the board of elections of the county, and the time for filing any certificate of nomination shall be the same as prescribed in the election law for filing other certificates of nomination with a board of elections. The ballots prepared by the board of elections shall include the names of all candidates nominated for town officers in any such towns. If any town propositions or questions may lawfully be voted upon at a town meeting held on general election day, an additional ballot box shall be provided marked "box for town propositions," in which shall be deposited the ballots cast on town propositions or questions.

Town Law, § 530, as amended by L. 1918, ch. 300.

### **Ballots.**

The county clerk shall provide all ballots for the submission of town propositions or questions. The expense of printing and delivering the official ballots, sample ballots and cards of instruction, poll books, tally sheets for inspectors and ballot clerks, and distance markers to be used at a general election in any such town, and of printing the lists of nominations therefor, if the town meeting be held at the same time therewith, shall be apportioned by the county clerk between such town and the county in the proportion of the number of candidates for town offices on such ballots respectively to the

whole number of candidates thereon and the amount of such expense so apportioned respectively to such town and the county shall be a charge thereon. The expense of preparing and furnishing the official ballots and sample ballots for the submission of town propositions or questions shall be a charge upon the town for which said ballots are furnished. The county clerk shall also furnish inspectors' and ballot clerks' return sheets for making the returns of the election of town officers and on the vote on town propositions or questions, and stationery and supplies which are usually provided by the town clerk for town meetings held at other times than on a general election day. The county clerk of each county not salaried shall be paid by such county a reasonable compensation for his services in carrying out the provisions of this article, to be fixed by the board of supervisors of the county.

Town Law, § 551.

#### **Canvass of votes.**

At the close of the polls at any such biennial town meeting and election in any such town the inspectors of election shall proceed to canvass the votes for the candidates for the several town offices, and for and against all town propositions duly submitted to the voters of such town in the election districts where such meeting and election was held, in the same manner as the votes for other candidates and propositions cast at the general election are canvassed. The inspectors of election shall perform the same duties with respect to the canvass of the vote and the filing of the returns thereof for such town officers, and all other matters pertaining to the determination of the result of the election, as is now provided by law with respect to the canvass and return of the votes cast for other officers elected at the general election held at the time of the holding of such town meeting and election. The county board of canvassers shall canvass the vote cast at any such town meeting and election for town officers and propositions voted upon at any such town meeting and election, in the same manner as is provided by law for the canvass of the votes cast at a general election. All provisions of law relating to the canvass of votes cast at a general election by the county board of canvassers, to the correction of clerical errors, the review of the determination by such board of canvassers, and all other matters pertaining to the canvass of the votes cast at a general election, shall be applicable to the canvass of all votes for such town officers and propositions. The county clerk of any such county shall transmit to the clerk of each town therein a certified copy of the determination of the county board of canvassers as to the election of each town officer and proposition voted for at the town meeting and election held in such town. The county clerk of any such county shall transmit to each person declared by the board of canvassers thereof to be elected to a town office therein, a certificate of the determination of such board. Upon the receipt by the town clerk of a certified copy of the certificate of the determination of the county board of canvassers hereinbefore mentioned, the town clerk and the justices of the peace shall meet and appoint in writing the inspectors of election as required by law. No list of nominations of candidates for town offices to be filed at any such biennial town meeting and election, or the result of the official canvass of the votes cast thereat, shall be required to be published. All the provisions of the election law not inconsistent with the provisions of this article shall apply to and govern town meetings and elections held as provided therein.

Town Law, § 552.

## TOWN MEETINGS IN COUNTIES OF BETWEEN SEVENTY-ONE THOU- SAND AND SEVENTY-FIVE THOU- SAND INHABITANTS.

### **Time of meeting; certificates of nomination.**

The next town meeting at which town officers shall be elected in any county of the state having a population of over seventy-one thousand inhabitants and less than seventy-five thousand inhabitants, according to the federal enumeration of the year nineteen hundred, shall be held on the first Tuesday after the first Monday in November in the year nineteen hundred and now and biennially thereafter, at the same places as general elections in such towns are held. No person shall be entitled to vote at any such town meeting or election unless he is registered and entitled to vote at the general election held at the same time that such town meeting is held. All elective town officers shall be elected at such general election in the same manner and at the same ballot as other officers who may be elected thereat. Certificates of nomination of candidates for a town office in any such towns shall be in duplicate, one of which shall be filed with the town clerk of the town, and the other with the board of elections of the county wherein such town is located, and, if nominated by a political party not earlier than the tenth Tuesday and not later than six days after the ninth Tuesday before such town meeting and election is held, or, if independent nominations, not earlier than the ninth Tuesday and not later than two days after the eighth Tuesday before such town meeting and election is held. The ballots prepared by the board of elections shall include the names of all candidates nominated for town officers in any such towns. The board of elections shall apportion to and charge the several towns in any of such counties with their respective proportionate shares of the expenses of the preparation and distribution of such ballots.

Town Law, § 560, as amended by L. 1918, ch. 300.

### **Ballots.**

Ballots for the submission of questions or propositions relating to town affairs shall be prepared and furnished at the expense of the town by the clerk thereof, as provided in the election law. Such ballots shall be distributed by the town clerk at the same time and in the same manner as are other ballots to be voted at a general election. An additional ballot box shall be provided, marked "box for town propositions" in which shall be deposited the ballots cast on town propositions or questions.

Town Law, § 561.

**Canvass of votes.**

At the close of the polls at any such biennial town meeting and election in any such town the inspectors of election shall proceed to canvass the votes for the candidates for the several town offices, and for and against all town propositions duly submitted to the voters of such town in the election districts where such meeting and election was held, in the same manner as the votes for other candidates and propositions cast at the general election are canvassed. The inspectors of election shall perform the same duties with respect to the canvass of the vote and the filing of the returns thereof for such town officers, and all other matters pertaining to the determination of the result of the election as is now provided by law, with respect to the canvass of the votes cast at a general election. All provisions of law relating to the canvass of votes cast at a general election by the county board of canvassers, to the correction of clerical errors, the review of the determination by such board of canvassers, and all other matters pertaining to the canvass of the votes cast at a general election, shall be applicable to the canvass of all votes for such town officers and propositions. The county clerk of any such county shall transmit to the clerk of each town therein a certified copy of the determination of the county board of canvassers as to the election of each town officer and proposition voted for at the town meeting and election held in such town. The county clerk of any such county shall transmit to each person declared by the board of canvassers thereof to be elected to a town office therein, a certificate of the determination of such board. No list of nominations of candidates for town offices to be filled at any such biennial town meeting and election, or the result of the official canvass of the vote cast thereat, shall be required to be published. All the provisions of the election law not inconsistent with the provisions of this article shall apply to and govern town meetings and elections held as provided herein.

Town Law, § 562.

**Officers to be elected.**

There shall be elected at the town meeting and election to be held in each town in any such county on the first Tuesday after the first Monday of November, in the year nineteen hundred and nine, and biennially thereafter, one supervisor, one town clerk, three assessors, one collector, one or two overseers of the poor, and not more than five constables, for the term of two years commencing on the first day of January, succeeding their election. There shall also be elected a town superintendent of highways unless the town shall have adopted a resolution that thereafter the town superintendent shall be appointed by the town board as provided in section forty-one of the highway law. The town superintendent's term of office shall begin on the first day of January succeeding his election and be for a term of two years. There shall also be elected at such town meeting and election and biennially thereafter, two justices of the peace for terms of four years, beginning on the succeeding first day of January. The collectors elected at such town meetings and elections shall enter upon the discharge of their duties after their predecessors have completed the duties of their offices, in respect to the collection of taxes and returns thereof, as now prescribed by law.

Town Law, § 563, as amended by L. 1918, ch. 372.

## TOWN MEETINGS IN COUNTIES OF BETWEEN FIFTY THOUSAND AND FIFTY-FOUR THOUSAND INHABI- TANTS.

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### **Time of meeting; certificates of nomination.**

The next town meeting at which town officers shall be elected in any county of the state having a population of over fifty thousand inhabitants and less than fifty four thousand inhabitants, according to the federal enumeration of the year nineteen hundred, shall be held on the first Tuesday after the first Monday in November in the year nineteen hundred and nine and biennially thereafter, at the same places as general elections in such towns are held. No person shall be entitled to vote at any such town meeting or election unless he is registered and entitled to vote at the general election held at the same time that such town meeting is held. All elective town officers shall be elected at such general election in the same manner as other officers who may be elected thereat. Certificates of nomination of candidates for a town board of elections of the county, and, if nominated by a political party, not earlier than the tenth Tuesday and not later than six days after the ninth Tuesday before such town meeting and election is held, or, if independent nominations, not earlier than the ninth Tuesday and not later than two days after the eighth Tuesday before such town meeting and election is held. The names of candidates for town office shall be printed on the same list as the names of candidates for other offices voted for in such towns at such general election.

Town Law, § 570, as amended by L. 1913, ch. 433, L. 1918, ch. 300

### **Ballots**

Ballots for the submission of questions or propositions relating to town affairs shall be prepared and furnished at the expense of the town by the clerk thereof, as provided in the election law. Such ballots shall be distributed by the town clerk at the same time and in the same manner as are other ballots to be voted at a general election. An additional ballot box shall be provided, marked "box for town propositions," in which shall be deposited the ballots cast on town propositions or questions.

Town Law, § 571.

### **Canvass of votes.**

At the close of the polls at any such biennial town meeting and election in any such town the inspectors of election shall proceed to canvass the votes for the candidates for the several town offices, and for and against all town

propositions duly submitted to the voters of such town in the election districts where such meeting and election was held, in the same manner as the votes for other candidates and propositions cast at the general election are canvassed. The inspectors of elections in each election district shall make a full and true statement of the whole number of votes cast for and against each candidate for a town office and for and against each town proposition voted upon at such town meeting. Such statement shall be in the same form as statements by such inspectors of other votes cast at general elections, and shall be signed by the inspectors and delivered by one of their number, selected by them for that purpose, to the town clerk and justices of the peace of the town, who shall convene and receive the same on Thursday next following such town meeting at ten o'clock in the forenoon. Such justices and town clerk shall at such time canvass such votes from the statements of the inspectors of the several election districts so delivered to them, and read and enter the results in the same manner as required of them by section sixty-four. No list of nominations of candidates for town offices to be filled at any such biennial town meeting and election, or the result of the official canvass of the vote cast thereat, shall be required to be published. All the provisions of the election law not inconsistent with the provisions of this article shall apply to and govern town meetings and elections held as provided herein. -

Town Law, § 572.

#### **Officers to be elected.**

There shall be elected at the town meeting and election to be held in each town in any such county on the first Tuesday after the first Monday of November, in each odd numbered year, one supervisor, one town clerk, three assessors, one collector, one or two overseers of the poor and not more than five constables. The persons first elected to the various offices above mentioned shall enter upon the discharge of their duties on the fourth day of March, nineteen hundred and eight, and serve until and including March third, nineteen hundred and ten. Their successors shall be elected at the biennial election and town meeting held in nineteen hundred and nine and biennially thereafter, for the term of two years commencing on the fourth day of March succeeding their election. There shall also be elected a town superintendent of highways unless the town shall have adopted a resolution that thereafter the town superintendent shall be appointed by the town board as provided in section forty one of the highway law. The town superintendent's term of office shall begin on the first day of January succeeding his election and be for a term of two years. There shall also be elected at such town meeting and election and biennially thereafter, two justices of the peace for terms of four years beginning on the succeeding first day of January.

Town Law, § 573, as amended by L. 1918, ch. 372.

#### **Voting machines.**

Nothing herein contained shall prevent the use of voting machines as provided for by the election law.

Town Law, § 574.



## TOWN MEETINGS IN COUNTIES OF ROCKLAND, ORANGE AND SULLIVAN.

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### **Time of meeting.**

The town meetings and elections of the towns in the counties of Rockland, Orange and Sullivan shall be held on the first Tuesday after the first Monday in November in the year nineteen hundred and nine and biennially thereafter at the same places as general elections in such towns are held. Such town meetings and elections shall be open for the purpose of voting for the same length of time as the polls are kept open upon election day for the purpose of voting for candidates to be elected at such general election. No person shall be entitled to vote at any such town meeting unless he is registered and entitled to vote at a general election.

Town Law, § 580.

### **Place of meeting; ballots; certificates of nomination.**

The town meetings and elections in such towns shall hereafter be held in the several election districts, to be conducted by the inspectors of election thereof. All elective town officers shall be elected and voted for at such general election in the same manner and on the same ballot as other officers who may be elected and voted for thereat. The provisions of the election law relating to the places and times of filing certificates of nominations, the declaration of nominations, the furnishing of ballots, ballot boxes and stationery, and the submission of town propositions are applicable in all respects to town meetings held in the towns in such counties under this article; and all the other provisions of the election law which apply when town meetings or elections are held at different times than general elections, are applicable to the holding of town meetings in such counties, unless otherwise contained in this article or inconsistent with its provisions.

Town Law, § 581.

### **Canvass of votes.**

At the close of the polls at any biennial town meeting and election in such towns, the inspectors shall proceed to canvass the votes for the candidates for the several town offices and for and against all town propositions duly submitted to the voters of such town in the election districts where such meeting was held, in the same manner as the votes for other candidates and propositions cast at the general election are canvassed. They shall make a full and true statement of the whole number of votes cast for each of the town officers balloted for, and of the whole number of votes for and against every question or proposition voted upon at such town meeting. Such statement shall be in the same form as statements made by such inspectors of the votes cast for the several candidates voted for at such election, and shall be signed by the inspectors and delivered by one of their number, selected by them for that purpose.

to the justices of the peace and town clerk of the town, who shall convene and receive the same at the office of the town clerk on the second day next following the town meeting at ten o'clock in the forenoon. Such justices and clerk shall immediately recanvass such votes upon the statements so made and delivered by the inspectors of the several election districts. The town clerk shall enter in his record a statement of the number of votes cast for each candidate, and for and against all town propositions duly submitted to the voters of such town in the several districts in his town, and declare in such record the propositions shown to be adopted, and the officers shown to be elected by such statement, or appointed as herein prescribed. Such record shall be signed by him and the justices acting as such canvassers. Inspectors of election in towns in the counties of Rockland, Orange and Sullivan shall be appointed by the town boards of such towns as provided in the election law. The provisions of the election law relating to inspectors of election shall apply to inspectors of elections in such towns notwithstanding the provisions of this article which are inconsistent therewith. All inspectors of election of such towns in office when this article takes effect shall hold office and continue to serve as such until the expiration of the terms for which they were elected or appointed.

Town Law, § 582.

#### **Officers to be elected.**

At the town meetings to be held in such towns at the time of the general election in the year nineteen hundred and nine, there shall be elected one supervisor, one town clerk, one collector, one or two overseers of the poor, and not more than five constables for terms of two years each, beginning on the succeeding first day of January. At the biennial town meetings to be thereafter held in such towns in the odd numbered years, all of such officers shall be elected and shall hold office for the terms of two years beginning on the first day of January succeeding their election. There shall also be elected a town superintendent of highways unless the town shall have adopted a resolution that thereafter the town superintendent shall be appointed by the town board as provided in section forty-one of the highway law. The town superintendent's term of office shall begin on the first day of January succeeding his election and be for a term of two years. The collectors elected at such town meetings shall enter on the discharge of their duties after their predecessors shall have completed the duties of their offices in respect to the collection of taxes and the return thereof as now prescribed by law.

Town Law, § 583, as amended by L. 1918, ch. 372.

#### **Justices of the peace, assessors and town superintendents of highways.**

At the town meetings to be held in such towns at the time of the general election in the year nineteen hundred and nine two justices of the peace shall be elected for terms of four years, beginning on the succeeding first day of January, and at each biennial town meeting thereafter there shall be elected two justices of the peace for a like term, beginning on the succeeding first day of January. At the town meeting to be held at the time of the general election in the year nineteen hundred and nine and biennially thereafter, three assessors shall be elected for terms of two years, beginning on the succeeding first day of January.

Town Law, § 584.



## **PART 9.**

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### **VILLAGE OFFICERS AND ELECTIONS.**

#### **MISCELLANEOUS PROVISIONS.**



## INCORPORATION.

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### **First election of officers after incorporation, when held.**

An election of officers of the village shall be held in either of the following cases:

1. After the lapse of ten days from the filing of the certificate of election showing the incorporation, unless an appeal has been taken therefrom.

2. If such an appeal has been taken, after the lapse of ten days from the filing of the decision of the county court sustaining the election, unless an appeal has been taken therefrom.

3. If an appeal has been taken from the decision of the county court, after the filing of the decision of the appellate division of the supreme court sustaining the election.

Village Law, § 26.

### **Appointment of village clerk; inspectors of election.**

Within five days after the right of an election of officers is complete, the town clerk with whom the proposition for incorporation was filed shall appoint the following officers:

1. A village clerk, who shall serve until his successor is chosen.

2. Three qualified electors of the village to serve as inspectors of such election, not more than two of whom shall be members of the same political party.

The town clerk shall file such appointments in his office and deliver a copy thereof to each of the persons so appointed, who, within three days after their appointment, shall file with such town clerk the constitutional oath of office.

Village Law, § 27.

### **Notice of election of officers.**

Within five days after his appointment, the village clerk shall give notice for an election of officers. Such notice shall be posted in ten conspicuous places in the village and published in a newspaper therein, if any. It shall also contain the following particulars:

1. The place in such village where the election is to be held.

2. The date of such election, which shall be not less than ten nor more than fifteen days after the posting of such notice.

3. The hours for holding such election, which shall be for the space of at least four consecutive hours between ten o'clock in the forenoon and four o'clock in the afternoon.

4. The officers to be elected.

Village Law, § 28.



**Officers to be elected; terms of office.**

The following officers shall be chosen at such first election: A president, two trustees, a treasurer and a collector.

If such election be held after the date of an annual election under this chapter, and before the first day of October, the terms of all such officers shall expire at the end of the current official year. If such election be held after the thirtieth day of September, and on or before the date fixed for the next annual election, the president, one trustee, the treasurer and the collector shall hold their offices until the end of the next official year, and one trustee shall hold his office during the next two official years.

The terms of office of officers elected under this section commence as soon as they have qualified.

Village Law, § 29.

**Conduct of election.**

All persons qualified to vote at town meetings and who have been residents of the territory thirty days prior to such election may vote for such officers. The inspectors appointed by the town clerk or any two of them shall conduct such election. The provisions of this chapter relating to the election of village officers at an annual election, including the canvass and certification of the result, apply to such first election, so far as practicable.

Village Law, § 30.

# OFFICERS AND ELECTIONS.

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## **Classification of villages.**

Villages are divided into classes according to their population as shown by the latest enumeration, village, state or federal, as follows:

First class. — Villages containing a population of five thousand or more.

Second class. — Villages containing a population of three thousand and less than five thousand.

Third class. — Villages containing a population of one thousand and less than three thousand.

Fourth class. — Villages containing a population of less than one thousand.

Village Law, § 40.

## **Qualifications of voters.**

A voter at a village election, other than the first, must possess the following qualifications:

1. To entitle him or her to vote for an officer, he or she must be qualified to vote at a town meeting of the town in which he or she resides, and must have resided in the village thirty days next preceding such election.

2. To entitle him or her to vote upon a proposition, he or she must be entitled to vote for an officer, and he or she must also be the owner of property in the village assessed upon the last preceding assessment-roll thereof.

Village Law, § 41, as amended by L. 1910, ch. 135; L. 1915, ch. 499; L. 1919, ch. 33.

## **Eligibility to office.**

A president, or trustee, or a fire, water, light, sewer, cemetery or police commissioner must, at the time of his election, be the owner of property assessed to him on the last preceding assessment roll, and must also be the owner during the term of his office of property assessed to him on the assessment roll of said village; except that in a village of the fourth class, such an officer must, at the time of his election or appointment and during his term, be the owner of property within such village assessed upon the last preceding assessment roll, and except that a president or trustee elected at the first village election must be the owner of property assessed upon the last preceding town assessment roll. Any resident elector is eligible to any other village office. A resident woman, who is a citizen of the United States, and of the age of twenty-one years, is eligible to the office of village clerk or deputy clerk. A person shall not hold two village offices at the same time, except the offices of collector and police constable or water and light commissioner; and except that village trustees may also be water commissioners.

Village Law, § 42, as amended by L. 1913, ch. 53; L. 1915, ch. 152.

**List of village officers; mode of choosing; official year; terms of office.**

Every village shall have a president, not less than two trustees, a treasurer, a clerk and a street commissioner. Except as herein provided, every village shall also have a collector, but a village of the first class may, upon the adoption of a proposition therefor at a special election and a village of the second class may, upon the adoption of a proposition therefor at an annual or special election, determine that no collector shall thereafter be elected therein. A village of the first or second class may also have a deputy clerk, and any village may have a village engineer.

There shall be a board of health in each village, consisting of the board of trustees of such village. The president, trustees, treasurer, collector, police justice and assessors shall be elective officers except that in a village of the first or second class the treasurer may be appointed, upon the adoption of a proposition therefor at a village election. All other village officers shall be appointed by the board of trustees, except as otherwise provided herein.

In all villages the offices of clerk and street commissioners may be elective, upon the adoption of a proposition therefor at a village election, and after the adoption of such a proposition, a proposition may be submitted for the appointment of such officers, at any subsequent village election. After a proposition has been adopted changing the method of filling such offices, another proposition changing such method shall not be submitted until after a period of two years from the adoption of such prior proposition.

An "official year" begins at noon on the first Monday after the third Tuesday of March, and ends at noon on the same Monday in the next calendar year. The term of office of the president, treasurer, collector, clerk, street commissioner and inspectors of election shall be one official year, of each trustee elected for a full term, two official years, and of a police justice, four calendar years. The term of each village officer, except police justice, begins at noon on the first Monday after the annual election. A full term of the police justice begins on the first day of January succeeding the annual election at which he was elected. After the first election in a village subject to the provisions of this chapter one-half of the trustees shall be elected each year for a full term.

Village Law, § 43, as amended by L. 1915, ch. 323, in effect April 17, 1916.

**Number of trustees.**

Villages in the several classes shall elect trustees as follows:

1. In the first class, not less than two nor more than eight.
2. In the second class, not less than two nor more than six.
3. In the third or fourth class, two or four.

Each village shall always have an even number of trustees.

Village Law, § 44.

**Changing number of trustees.**

Within the limitations herein prescribed the number of trustees may be changed by adopting a proposition therefor at a special election. If the number be increased, the additional trustees shall be elected at the next annual election. One-half of the additional trustees shall be elected for one year and one-half for two years. If the number of trustees be reduced, such reduction

shall not take effect until the expiration of the terms of the trustees then in office.

Village Law, § 45.

#### **Election of trustees by wards.**

A village of the first or second class may elect trustees by wards upon the adoption of a proposition therefor at a special election. If such proposition be adopted, the board of trustees shall meet within twenty days thereafter and divide the village into wards of a number equal to one-half of the number of trustees which the village has a right to elect. Such wards shall contain a population as nearly equal as may be, and be of convenient and contiguous territory, in as compact form as practicable. The board of trustees shall make a certificate of such division, which shall contain a description of each ward, and shall file the same in the office of the village clerk, and publish it in each newspaper published in the village, at least twenty days before the next annual election. One trustee shall thereafter be elected annually in each ward, for a full term.

If after such division into wards the number of trustees in the village be changed, the board of trustees shall, in like manner, make a new division into wards.

Village Law, § 46.

#### **Election of police justice.**

The office of police justice is continued in every village in which it is now established. A village may establish the office of police justice by adopting a proposition therefor. A village, in which the office of police justice has been established, may abolish such office at an annual election, to take effect upon the expiration of the term of the police justice then in office.

Village Law, § 47.

#### **Election of assessors.**

The board of trustees shall act as assessors of the village, or may appoint of their number a committee for that purpose, unless separate assessors are appointed or elected as provided by this section. If twenty-five electors qualified to vote upon a proposition shall present a petition to the board of trustees for the election of separate assessors, it shall submit to the next annual election a proposition therefor, and if such proposition be adopted, shall appoint three persons to be assessors of such village for the terms of one, two and three years, respectively, and thereafter at each annual election one assessor shall be elected for a full term of three years, unless said petition shall be for the election of one assessor, and such proposition is adopted, in which case, the board of trustees shall appoint one person to be assessor of such village until the next annual election, at which election and each annual election thereafter, one assessor shall be elected for the term of one year. In a village of the first or second class, which now has no separate assessors, the board of trustees may, by resolution, direct that three assessors be elected at the next annual election, and they shall be elected accordingly for the terms of one, two and three years, respectively. At each annual election thereafter one assessor shall be elected for a full term of three years. A village having separate assessors, when this chapter takes effect, either elective or appointive, may continue to elect or appoint assessors until such village shall decide by a

proposition submitted at an annual election to have the board of trustees, or a committee thereof, act as assessors. If twenty five electors qualified to vote upon a proposition shall present a petition to the board of trustees to abolish separate assessors, it shall submit such proposition to the next annual election to which it is entitled to be submitted under this chapter, and if adopted no assessors shall be elected or appointed, except that such village shall continue to elect or appoint assessors whose terms of office shall expire with the term of the assessor then in office having the longest term to serve, after which time the trustees, or committee therefrom, shall act as assessors.

Village Law, § 48.

### **Election districts.**

A village, containing not more than eight hundred qualified electors, shall constitute a single election district for village elections. If at an annual election the number of votes cast for village officers shall exceed eight hundred, the board of trustees may by resolution, adopted at least thirty days before the next annual election, divide such village into election districts, containing not more than eight hundred voters. Such resolution shall specify the boundaries of each district, but a ward shall not be divided in the formation thereof, except to make two or more election districts wholly within such ward. Such resolution shall be published and posted with a notice of such election.

Village Law, § 49.

### **Officers to be elected at annual election.**

Elective officers shall be filled at the annual election next preceding the expiration of the terms thereof. If a vacancy in an elective office occurs more than ten days prior to an annual election, at which a successor for a full term is not to be chosen, it shall be filled at such election for the remainder of the unexpired term.

Village Law, § 50.

### **Registration of voters.**

A village may adopt, at an annual or special election in the manner provided in this chapter for the submission of propositions, a proposition for the registration of voters at elections in such village as provided by this section, and thereafter the provisions of section one hundred and sixty-one of the

election law that no registration shall be required for village elections shall not apply to such village. If such proposition be adopted the inspectors of election of each election district of such village shall meet on the tenth day preceding each election in such village at the place in such election district where the election is to be held, and at such hours as the board of trustees or such members thereof as are in office, shall by resolution adopted at least twenty days before every registration day designate, which shall include at least four consecutive hours between sunrise and eight o'clock in the evening, for the purpose of preparing a register for such election, which shall, so far as practicable, be in the same form as the register of voters in such election district for the last preceding general election. The town clerk of the town shall, upon application, deliver to such inspectors the register of the last preceding general election in any election district in which such election district is wholly or partly situated. Such inspectors shall, for the annual village election, prepare a register for their election district by copying from the town register the names of all persons qualified to vote at such election in such district which appear upon the register of voters for the last preceding general election in such election district, except the names of such voters as are proven to the satisfaction of such inspectors to have ceased to be voters in such district since their names were placed upon such register, and shall add to such register the names of all persons known or proven to the satisfaction of such inspectors to be then or thereafter entitled to vote at the election for which such registration is made. Such inspectors shall in like manner prepare a register for each special election in such village, except that the register for the annual election in such village shall be used by them as the basis therefor. All the provisions of the election law in relation to the registration of voters shall, so far as practicable, apply to the registration provided for by this section. The village clerk shall furnish the necessary blank books and blanks at the expense of such village. Elections in such village shall be conducted in the manner provided by this chapter and the election law, except that no person shall be entitled to vote thereat whose name does not appear upon the register of the election district in which he claims to be entitled to vote.

Village Law, § 51-a, added by L. 1916, ch. 423; amended by L. 1911, ch. 427.

#### **Inspectors of election.**

If a village constitutes but one election district and a proposition for the registration of voters has not been adopted pursuant to section fifty-one-a of this chapter, the trustees, president and clerk of the village, after the first election of village officers, or such of them as are in office when an election takes place, shall be inspectors of election for the village, and one or more of them shall preside at all elections. If neither a trustee, the president nor the clerk shall be present, the electors may appoint a chairman to preside, who shall have all the powers of an inspector. If a village is divided into election districts and a proposition for the registration of voters has not been adopted pursuant to section fifty-one-a of this chapter, the board of trustees



shall, annually, at least thirty days before the annual election, appoint two inspectors of election for each district to preside at all village elections therein, until their successors are appointed. Such inspectors shall not both be chosen from the same political party. The board may also appoint for each district a poll clerk and a ballot clerk. If a proposition for the registration of voters has been adopted in any village pursuant to section fifty-one-a of this chapter, the president of the village shall, annually, at least twenty days before the annual election, appoint four inspectors of election for such village, or if the village constitutes more than one election district, four inspectors of election for each election district, to preside at all village elections until their successors are appointed. Such appointments shall be made from lists prepared, certified and filed with the village clerk by the two political parties entitled under the election law to representation on a board of election officers, if any such lists shall have been filed as hereinafter provided. The village committee of the party casting the highest number of votes and the village committee of the party casting the next highest number of votes at the last preceding general election may each prepare a list containing the names of at least two persons qualified to serve as inspectors of election, for each election district in such village, which list shall be certified by the chairman of such committee, and filed with the village clerk. From each of the two lists so filed, if filed the president of the village shall appoint two persons who possess the qualifications prescribed by law for election officers. If in any village more than one such list be submitted on behalf or in the name of the same political party, only that list can be accepted which is certified by the proper officer or officers of the faction of such party which was recognized as regular by the last preceding state convention of such party: or if no such convention was held during the year, by the proper officer or officers of the faction of such party, which at the time of the filing of such list is recognized as regular by the state committee of such party. From the additional names, if any, contained on the list so filed, of persons qualified to serve as such, the president of the village shall appoint inspectors of election in case of resignation, declination or other incapacity of persons appointed to such office. If such lists contain no additional names of such persons, the president of the village shall fill vacancies by appointing persons known, or proved to his satisfaction, to be members of the same political party in which such vacancy occurred.

Village Law, § 31, as amended by L. 1910, ch. 423, in effect June 8, 1910.

#### **Annual election.**

An annual election shall be held in each village on the third Tuesday in March, unless a town meeting of a town in which any part of the village is situated, or a general election, shall be held on such day, in which case the annual election shall be held upon the next day thereafter. All other village

elections are special elections. A village of the second, third or fourth class may by the adoption at an annual or special election of a proposition therefor, hold its annual election on the third Tuesday in June, unless a town meeting of a town in which any part of the village is situated, or a general election, shall be held on such day, in which case the annual election shall be held upon the next day thereafter. A special election for the adoption of such a proposition may be held at any time. The official year in such village shall begin at noon on the first Monday after the said election. All villages which have heretofore by resolution duly adopted designated any other Tuesday in June for their annual election shall hereafter hold such annual election on the third Tuesday of June except as above stated. The board of trustees or such members thereof as are in office shall by resolution, adopted at least ten days before every village election, designate the hours of opening and closing the polls thereof, which shall include at least four consecutive hours between sunrise and eight o'clock in the evening. The resolution shall also designate the place of holding the election, or if there is more than one election district in the village, the place of holding the election in each district. The board or such members thereof as are in office also shall, at least ten days before the election, cause notice thereof to be published at least once in the official paper, if such paper is published in the village, and a printed copy thereof conspicuously posted in at least six public places in the village, specifying the time and place or places, of holding the election, the hours of opening and closing the polls thereof, the offices, if any, and the term to be filled, and setting forth in full all propositions to be voted upon. If the board or such members thereof as are in office neglects to appoint the place or places for the annual election, the election shall be held at the place or places of the last preceding annual election, and if it neglects to appoint the hours of opening and closing the polls thereof, such hours shall be the same as at the last preceding annual election. An annual election of the village officers shall not be invalid because of a failure to give such notice. A vote upon a proposition shall be void unless due notice of the election has been given. If a village, constituting a single election district, is divided into wards and elects trustees by wards, separate ballot boxes shall be provided for each ward, and the ballots of the electors residing therein shall be deposited in the ballot box designated for such ward.

Village Law, § 52.

#### **Canvass of annual election.**

The inspectors of election of each election district shall, immediately upon the closing of the polls of each annual election, proceed to canvass the votes cast thereat, and shall complete such canvass without adjournment. They shall, before nine o'clock in the forenoon of the following day, file with the village clerk their certificate setting forth the holding of the election, the total number of votes cast for each office, the number of votes cast for each person for such office, the total number of votes cast upon each proposition voted upon, and the number cast for and against it. If the village contains more than one election district, the board of trustees of such village shall meet at its usual place of meeting, at nine o'clock in the forenoon of the next day after the election. The village clerk shall produce at such meeting the returns of the inspectors of election, and the board of trustees shall canvass such returns, and file in the office of the village clerk a certificate declaring

the result. The person eligible and receiving the highest number of votes for an office shall be elected thereto. If two or more persons receive an equal and the greatest number of votes for the same office, the board of trustees shall determine by lot which of them shall be deemed elected.

Village Law, § 53.

**Failure to designate terms.**

No election of village officers, heretofore or hereafter held in any village, shall be invalid on account of the failure of the electors to designate in their ballots the respective terms of office of persons to be elected thereat, for the same office, for different terms; but the persons so to be elected to such office, who are eligible and receive the highest number of votes, shall be elected. The person first named on a ballot containing the names of more than one person for such an office, and not designating their respective terms, shall be deemed designated for the longest term, the second, for the next longest term, and so on to the end; and the inspectors of election shall count the ballots and certify the result accordingly. If the votes shall not be so counted and canvassed the board of trustees shall, at least twenty days before the expiration of the shortest term, determine by lot which of such officers shall hold office for each term, and thereupon such officers shall be deemed to have been elected accordingly.

Village Law, § 54.

**Special elections of officers.**

Whenever the day fixed by law for an annual election shall have passed, and no election shall have been held thereon, the board of trustees shall, forthwith, give notice of a special election, to be held at the place of the omitted annual election. Such notice shall be given in like manner as a notice of an annual election, and a special election shall be held in the same manner as, and for the purposes of, an annual election. For the purpose of determining the terms of office of the officers elected thereat, the time therefrom to the beginning of the next official year shall be deemed one year. Whenever vacancies shall occur in the board of trustees so that a majority of the members thereof are not in office, the members of such board as are in office shall forthwith cause a special election to be held for the purpose of filling such vacancies. Such special election shall be held in the same manner as an annual election, and notice thereof shall be given by the members of such board as are in office in like manner as for an annual election. If the offices of all the trustees and the president are vacant, the clerk shall cause such special election to be held and shall give notice thereof as above provided. If the office of clerk is also vacant, a special election to fill such vacancies shall be held upon the call of at least twenty-five taxpayers residing in such village, who shall sign a notice therefor stating the time and place where such special election shall be held, and at least ten days before such date so named cause the same or copies thereof to be posted in six or more conspicuous places in such village and to be published in a newspaper published in said village if there be one. The officers elected at such special election shall immediately enter upon the duties of their offices and shall hold such offices for the unexpired terms of their predecessors. A special election under this section shall not be held during the months of February and March.

Village Law, § 55.

**Submission of propositions; special election.**

The board of trustees may, upon its own motion, and shall, upon the petition of twenty-five electors qualified to vote upon a proposition, cause to be submitted at a village election a proposition upon any question which may be lawfully decided thereat. A separate board of fire, water, light, sewer, cemetery or other commissioners may present to the board of trustees a petition, requesting the submission of a specified proposition, relating to its department, at a village election. Upon the presentation of such petition, the board of trustees shall cause the proposition to be submitted accordingly. If a petition under this section be presented after the annual election and before the first day of January following, a special election shall be called, to be held not less than ten nor more than twenty days after the presentation of such petition. If a petition be presented at any other time, and more than ten days prior to the annual election, the proposition shall be submitted at such annual election. Except for the purpose of fixing or changing the number of trustees, or for the purpose of determining whether an officer shall be thereafter elected or appointed, or the submission of a proposition to pay the additional expense of a state or county highway through the village, no special election shall be held in the months of February or March. The foregoing provisions in this section contained in respect to the time of presentation of a petition under this section and prohibiting a special election in February or March, shall not apply to villages which hold their annual election in June, but in such a village the board of trustees may, upon its own motion, submit a proposition at a special village election in April, and if such a petition be presented after the annual election, and before the first day of April following, a special election shall be called in the manner hereinbefore provided; but if a petition be presented at any other time and more than ten days prior to the annual election, the proposition shall be submitted at such annual election. Except for the purpose of fixing or changing the number of trustees, or for the purpose of determining whether an officer shall be thereafter elected or appointed, or the submission of a proposition to pay the additional expense of a state or county highway, no special election shall be held in such a village in the month of May or June. Notice of a special election for the submission of a proposition shall be given in the same manner as for an annual election. Such special election shall be held by the same officers, and conducted and the result canvassed in the same manner as an annual election.

Village Law, § 56, as amended by L. 1910, ch. 4, in effect February 4, 1910.

**Votes upon propositions to be by ballot.**

All votes upon a proposition submitted at a village election shall be by ballot; and, unless otherwise provided, the provisions of the election law, relating to ballots, apply to propositions submitted under this chapter.

Village Law, § 57.

**Official undertakings.**

The treasurer, collector, police justice, street commissioner, and such other officers as may be required by the board of trustees, shall, before they enter upon the duties of their respective offices, each execute to the village and file with the village clerk an official undertaking in such sum and with such sureties as the board of trustees shall direct and approve. The board of trustees may at any time require any such officer to file a new official undertaking for such sum and with such sureties as the board shall approve.

Village Law, § 58.

**Notice to persons chosen to a village office.**

The clerk of the village shall, within three days after the election or appointment of a village officer, except the first election or appointment after the incorporation of the village, notify each person elected or appointed of his election or appointment and of the date thereof, and that he is required to file his oath of office with such clerk before entering upon the duties thereof, and, if an official undertaking be required of him, by or in pursuance of law, that he is also required to file the same with such clerk, and that upon his failure so to do, he will be deemed to have declined the office. If an undertaking is required of a village officer, by or in pursuance of law, after entering upon the duties of his office, the clerk of the village shall thereupon serve upon such officer, personally, a written notice that he is required to file such undertaking with the clerk, within ten days after the service of the notice, and that upon his failure to do so, his office will become vacant.

Village Law, § 59.

**Resignations and removals.**

A village officer may resign to the board of trustees, and his resignation shall take effect upon the delivery thereof to the village clerk, unless a time be specified in such resignation for its taking effect thereafter, in which case, such resignation shall take effect at the time so specified.

In addition to the method provided by the public officers law, an officer, except a president or a trustee, appointed by the board of trustees of the village, may be removed by the board for misconduct, on notice to such officer and an opportunity given him to make his defense.

Village Law, § 60.

**Filling of vacancies.**

Vacancies occurring otherwise than by expiration of term in a village office, other than that of health officer, shall be filled by the board of trustees, if the office be elective, until the end of the current official year, but if the office be appointive, for the balance of the unexpired term. If a vacancy in an elective office occurs within less than ten days prior to an annual election, and such office is not to be filled at such election, the appointment shall be for a term which will expire at the end of the next official year.

Village Law, § 61.

**Refusal of officer to surrender his office.**

If a person who has been an officer of a village refuses or neglects to deliver to his successor in office, within ten days after notification and request, all the moneys, books, papers, records, property and effects of every description, which have come into his possession or under his control by virtue of his office, and belonging to the village or appertaining to the office, he shall forfeit and pay to the village the sum of twenty five dollars for each and every day he shall so neglect or refuse, and also all damages, costs and expenses caused by such neglect or refusal.

Village Law, § 62.

## REINCORPORATION.

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### **Effect of reincorporation where proposition for reincorporation has been submitted.**

If the proposition be adopted, the reincorporation of the village under this chapter shall take effect immediately upon the filing of the certificate of election in the office of the village clerk. From and after such filing such village shall be deemed incorporated under this chapter, and shall possess all the powers, enjoy all the privileges, and be subject to all the liabilities, in all respects and for all purposes, as if it had been originally incorporated thereunder. Such reincorporation shall not affect any action then pending or cause of action existing by or against such village, nor property rights thereof under the provisions of any law to which it was then subject. The officers of the village in office when the reincorporation takes effect shall continue to hold their offices until noon on the Monday following the date when the next annual election in such village may be held under this chapter, at which time their terms of office shall expire.

Village Law, § 303.

### **Determination of number of trustees.**

A special election to determine the number of trustees to be elected in such village at the first annual election after such reincorporation shall be held in the month of February next preceding, in the manner and upon the notice prescribed by article three of this chapter. If the number of trustees be not determined before such first annual election the village shall elect two trustees. At such first annual election after reincorporation one-half of the trustees shall be elected for one year, and one-half for two years.

Village Law, § 304.

### **Reincorporation of certain villages confirmed.**

All villages in the state incorporated by special laws and subject to their provisions which have attempted to reincorporate under the provisions of chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven and the acts amendatory thereof, between July one, eighteen hundred and ninety-seven, and January one, \*nineteen hundred and four, and which have held their elections, elected their officers and conducted their municipal affairs under or agreeably or substantially under or substantially agreeably to the provisions of said law for the period of one year, or longer, are hereby declared to be regularly and duly incorporated villages under this chapter; and, so far as any defects, omissions or irregularities in the proceedings for

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\* So in original.



such reincorporation affect their annual and special elections and meetings and their acts and proceedings at such elections and meetings and the election of their presidents and their other village officers and all the acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, their said annual and special elections and meetings and their acts and proceedings at said elections and meetings and the election of their presidents and trustees and their other village officers and all the acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, are hereby declared to be legal and valid, and so far as any defects, omissions or irregularities in their proceedings for such reincorporation affect the title to the offices held by their presidents, trustees and other officers, their said presidents, trustees and other officers are hereby declared to be legally holding and entitled to their offices de jure until the expiration thereof as provided by this chapter.

This section shall not affect any action or proceeding now pending in any court.

Village Law, § 306.

## PROVISIONS APPLICABLE TO VILLAGES WHOSE POPULATION EXCEEDS FOURTEEN THOUSAND.

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### **President's term of office.**

In every such village the term of office of the president shall be two official years.

Village Law, § 311.

### **Board of police commissioners.**

Every such village by adopting a proposition therefor at an annual election may establish or abolish a separate board of police commissioners composed of five members, who must at the time of their election and during their term be the owners of property assessed upon the last preceding assessment-roll of the village. If the proposition to establish such board be adopted, the board of trustees at its next annual meeting shall appoint such commissioners for the terms of one, two, three, four and five years respectively; and at each annual meeting thereafter the board of trustees shall appoint one commissioner for the full term of five years. Said board shall have all the powers and is subject to all the liabilities and must perform all the duties of the president and board of trustees so far as the same relate to the police or police department, and to the exclusion of said president and board of trustees.

Village Law, § 312.

## MISCELLANEOUS PROVISIONS.

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### **Expiration of terms of officers.**

A police justice or an assessor in office when this chapter takes effect shall continue in office until the expiration of the term for which he was elected or appointed. Except as otherwise provided in this chapter the terms of all other officers shall expire on the Monday following the third Tuesday in March.

Village Law, § 351.

### **Consolidation of villages; number of trustees; wards; clerk.**

Within five days after the consolidation takes effect the boards of trustees of the consolidating villages shall meet in joint session and determine, within the limitations prescribed by section forty four, the number of trustees to be elected in the new village at the first election, and if such new village is a village of the first class, may also divide such village into wards of a number equal to one half of the number of trustees to be elected. Such wards shall contain a population as nearly equal as may be, and be of convenient and contiguous territory, in as compact form as practicable. They shall make a certificate of such division which shall contain a description of each ward, and file the same in the office of the village clerk, who shall at least fifteen days before such first election post copies thereof in at least ten conspicuous public places in such village and publish a copy thereof at least once in each newspaper printed in the new village. They shall also at such joint meeting appoint a clerk of the new village, who shall hold his office until his successor is appointed.

Village Law, § 355.

### **First election in consolidated village.**

At their joint meeting, the boards of trustees of the consolidating villages shall fix the date of the first election, which must be held within twenty days after the joint meeting, except that if the election on the question of consolidation is held in the month of January, such first election must be held on the day of the next annual election under this chapter. They shall provide for giving notice of such election as in case of an annual election under this chapter. If such village is not divided into wards, the first election shall be held in the consolidating villages by election districts or otherwise as if such consolidation had not taken place. If such village is divided into wards, each ward shall constitute an election district for the first election and the boards of trustees of the consolidating villages at their joint meeting shall appoint two inspectors of election, a poll clerk and a ballot clerk for each ward to conduct such election therein. Such inspectors shall not both be chosen from

the same political party. Section twenty-nine of this chapter applies, so far as practicable, to the first election in the new village, except that if an election is held after the thirtieth day of September and on or before the date fixed for the next annual election, one-half of the number of trustees elected shall hold office until the end of the next official year, and one-half during the next two official years. If such village is divided into wards, two trustees shall be elected in each ward, and if the election is held after the thirtieth day of September and on or before the date fixed for the next annual election, one of such trustees shall be elected to hold office until the end of the next official year, and one to hold office during the next two official years. Section fifty-three of this chapter applies, so far as practicable, and the joint boards of trustees shall constitute the canvassing boards at such first election. The certificate of such first election shall be filed with the clerk of the new village on the day of canvass, and thereupon the terms of office of the officers of the consolidating villages shall expire and the terms of officers elected for the new village shall commence.

Village Law, § 264.

## EFFECT OF VILLAGE LAW.

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### **Effect of chapter on special villages.**

A village incorporated under and subject to a special law, and each officer thereof, possesses all the powers and is subject to all the liabilities and responsibilities conferred or imposed upon a village incorporated under this chapter, or upon an officer thereof, not inconsistent with such special law.

Village Law, § 350.

### **Effect of revision on general villages.**

The following villages are subject to the provisions of this chapter, as if incorporated thereunder:

1. Villages incorporated under chapter four hundred and twenty six of the laws of eighteen hundred and forty seven, or the acts amendatory thereof and supplemental thereto, and which have not been reincorporated under a special law.

2. Villages incorporated or reincorporated under chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, or the acts amendatory thereof and supplemental thereto.

3. Villages incorporated under chapter four hundred and fourteen of the laws of eighteen hundred and ninety seven, or the acts amendatory thereof and supplemental thereto.

4. Villages incorporated by special law and reincorporated under a general law and now subject to its provisions.

Village Law, § 381.

## **PART 10.**

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### **SCHOOL OFFICERS AND ELECTIONS.**

#### **MISCELLANEOUS PROVISIONS.**

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**NOTE.**—Consolidated Education Law was amended and sections renumbered generally by L. 1910, ch. 140.





## DISTRICT MEETINGS IN GENERAL.

### Notice of first meeting of district.

Whenever any school district shall be formed, or two or more common school districts are consolidated as provided in section one hundred and thirty-two the district superintendent of schools, or any one or more of such district superintendents within whose districts it may be, shall prepare a notice describing such district, and appointing a time and place for the first district meeting, and deliver such notice to a taxable inhabitant of the district.

Education Law, § 190, as amended by L. 1913, ch. 129.

### Service of notice of first meeting of district.

It shall be the duty of such inhabitant to notify every other inhabitant of the district qualified to vote at the meeting, by delivering to him a copy of the notice of such meeting, or in case of his absence from home, by leaving a copy thereof, or so much thereof as relates to the time, place and object of the meeting, at the place of his abode, at least six days before the time of the meeting.

Education Law, § 191.

### Second notice of first meeting of district.

In case such meeting shall not be held, and in the opinion of the school commissioner it shall be necessary to hold such meeting, before the time herein fixed for the first annual meeting, he shall deliver another such notice to a taxable inhabitant of the district, who shall serve it as provided in section one hundred and ninety-one.

Education Law, § 192.

### Notice of annual meeting.

1. The district clerk of each common school district shall give notice of the time and place of the annual meeting by posting five notices of such meeting in five conspicuous places in the district five days previous to the date of such meeting. One of such notices must be posted on the front door of the school house.

2. The clerk of each union free school district shall give notice of the time and place of the annual meeting by publishing a notice once in each week for the four weeks next preceding such district meeting, in two newspapers if there shall be two, or in one newspaper if there shall be but one, published in such district. But if no newspaper shall then be published therein, the said notice shall be posted in at least twenty of the most public places in said district twenty days before the time of such meeting.

3. Such notice and all other notices and reports required to be published in newspapers under the provisions of this chapter shall be printed at the rates and for the fees prescribed in section thirty-three hundred and seventeen of the code of civil procedure. In the event that the publishers of one or both of the newspapers published within such district shall refuse to print and publish the notices or reports at the rates and for the fees so prescribed, publication in such newspaper or newspapers so refusing may be omitted, in which case the notices or reports shall be posted as required by this section in lieu of such publication.

Education Law, § 193, as amended by L. 1921, ch. 284.

### Time and place of annual meeting.

The annual meeting of each school district shall be held on the first Tuesday of May in each year, and, unless the hour and place thereof shall have been fixed by a vote of a previous district meeting, the same shall be held in the school house at seven-thirty o'clock in the evening. If a district possesses more than one school house, it shall be held in the one usually employed for that purpose, unless the trustees designate another. If the district possesses no school house, or if the school house shall not be accessible, then the annual meeting shall be held at such place as a trustee, or, if there

be no trustee, the clerk, shall designate in the notice. Provided, however, that in union free school districts whose limits do not correspond with those of an incorporated city or village the board of education may at any regular meeting, by resolution duly adopted and entered upon its minutes, determine that the annual meeting of such union free school district shall be held on the first Tuesday in August; and thereafter until such determination shall be changed, such annual meeting shall be held on the first Tuesday in August of each year; and where any such district shall have heretofore or hereafter determined that the election of the members of the board of education shall be held on the Wednesday next following the day designated by law for holding the annual meeting of such district as provided by section three hundred and three of the education law, such election shall be held at the time so determined until such determination shall be changed.

Education Law, § 191 as amended by L. 1910, chs. 140 and 443; L. 1912, ch. 440; L. 1915, ch. 232, in effect April 7, 1916.

#### Annual meetings of districts re-formed after dissolution.

The districts formed by the dissolution of a union free school district as provided in sections one hundred and forty six and one hundred and forty seven of this chapter shall hold their annual meetings on the first Tuesday of May next after the dissolution of such union free school district, and shall elect officers as now required by law.

Education Law, § 195, as amended by L. 1913, ch. 129. In effect March 25, 1913.

#### Special meeting to transact business of annual meeting.

Wherever the time for holding the annual meeting in school districts shall pass without such meeting being held in a district a special meeting shall thereafter be called by the trustees or by the clerk of such district for the purpose of transacting the business of the annual meeting, and if no such meeting be called by the trustees or the clerk within ten days after such time shall have passed the school commissioner of the commissioner district in which said school district is situated or the commissioner of education may order any inhabitant of such district to give notice of such meeting in the manner provided in section one hundred and ninety one and the officers of the district shall make to such meeting the reports required to be made at the annual meeting subject to the same penalty in case of neglect, and the officers elected at such meeting shall hold their respective offices only until the next annual meeting and until their successors are elected and shall have qualified.

Education Law, § 196.

#### Special meetings in common school districts.

1 A special district meeting shall be held whenever called by the trustees. The notice thereof shall state the purposes for which it is called and no business shall be transacted at such special meeting, except that which is specified in the notice and the district clerk, or, if the office be vacant, or the clerk be sick or absent, or shall refuse to act, a trustee, or some taxable inhabitant by order of the trustees shall serve the notice upon each inhabitant of the district qualified to vote at district meetings at least six days before the day of the meeting, in the manner prescribed in section one hundred ninety one.

2 The inhabitants of a district may at any annual meeting, adopt a resolution prescribing some other mode of giving notice of special meetings, which resolution and the mode prescribed thereby shall continue in force until rescinded or modified at some subsequent annual meeting.

Education Law, § 197.

**Special meetings in union free school districts.**

1. Boards of education shall have power to call special meetings of the inhabitants of their respective districts whenever they shall deem it necessary and proper, in the manner prescribed in subdivision two of section one hundred and ninety-three of this chapter.

2. In union free school districts whose limits correspond with those of any incorporated village or city, the boards of education shall have power to call special meetings of the inhabitants of their respective districts for the purposes mentioned in section four hundred and sixty-seven, in the manner prescribed in said subdivision two of section one hundred and ninety-three.

Education Law, § 198.

**Call by school commissioner of special district meeting.**

When the clerk and all the trustees of a school district shall have removed from the district, or their office shall be vacant, so that a special meeting can not be called, as hereinbefore provided, the school commissioner may in like manner give notice of, and call a special district meeting.

Education Law, § 199.

**Effect of want of due notice of district meetings.**

The proceedings of no district meeting, annual or special, shall be held illegal for want of a due notice to all the persons qualified to vote thereat, unless it shall appear that the omission to give such notice was willful and fraudulent.

Education Law, § 200.

**Penalty for failure to serve notice.**

Every taxable inhabitant, to whom a notice of any district meeting shall be delivered for service pursuant to any provisions of this article, who shall refuse or neglect to serve the same, as hereinbefore prescribed, shall forfeit five dollars for the benefit of the district.

Education Law, § 201.

**Duty to attend district meetings.**

Whenever any district meeting shall be duly called, it shall be the duty of the inhabitants qualified to vote thereat, to assemble at the time and place fixed for the meeting.

Education Law, § 202.

**Qualifications of voters at district meetings.**

A person shall be entitled to vote at any school meeting for the election of school district officers, and upon all other matters which may be brought before such meeting who is:

1. A citizen of the United States,

2. Twenty-one years of age,

3. A resident within the district for a period of thirty days next preceding the meeting at which he offers to vote; and who in addition thereto possesses one of the following four qualifications:

a. Owns or hires, or is in the possession under a contract of purchase of real property in such district liable to taxation for school purposes, or

b. Is the parent of a child of school age, provided such child shall have attended the district school in the district in which the meeting is held for a period of at least eight weeks during the year preceding such school meeting, or

c. Not being the parent, has permanently residing with him a child of school age who shall have attended the district school for a period of at least eight weeks during the year preceding such meeting, or

d. Owns any personal property, assessed on the last preceding assessment roll of the town, exceeding fifty dollars in value, exclusive of such as is exempt from execution.

No person shall be deemed to be ineligible to vote at any such meeting, by reason of sex, who has the other qualifications required by this section.

Education Law, § 203.

#### **Declaration in case of challenge of voter.**

If a person offering to vote at any school district meeting shall be challenged as unqualified, by any legal voter in such district, the chairman presiding at such meeting shall require the person so offering, to make the following declaration: "I do declare and affirm that I am, and have been for the thirty days last past, an actual resident of this school district and that I am qualified to vote at this meeting." And every person making such declaration shall be permitted to vote on all questions proposed at such meeting, but if any person shall refuse to make such declaration, his vote shall be rejected.

Education Law, § 204.

#### **Penalty for false declaration or unauthorized vote.**

A person who shall willfully make a false declaration of his right to vote at a school meeting, after his right to vote thereat has been challenged, shall be deemed guilty of a misdemeanor. And a person not qualified to vote at such meeting, who shall vote thereat, shall thereby forfeit ten dollars, to be sued for by the supervisor for the benefit of the common schools of the town.

Education Law, § 206.

#### **Powers of voters.**

The inhabitants entitled to vote, when duly assembled in any district meeting shall have power, by a majority of the votes of those present.

1. To appoint a chairman.
2. To appoint a clerk for the time, if the district clerk is absent.
3. To adjourn from time to time as occasion may require.
4. To elect one or three trustees as hereinafter provided, a district clerk and a district collector, and in any district which shall so determine, as hereinafter provided, to elect a treasurer, at their first meeting, and so often as such officers or any of them become vacated, except as hereinafter provided.
5. At the first meeting, or at any special meeting duly called for that purpose, the qualified voters of any school district are authorized to adopt by a vote of a majority of such voters present and voting, to be ascertained by taking and recording the ayes and noes, a resolution to elect a treasurer of said district who shall be the custodian of all moneys belonging to said district.

and the disbursing officer of such moneys. If such resolution shall be adopted, such voters shall thereupon elect by ballot a treasurer for said district. Any person elected treasurer at any meeting other than an annual meeting shall hold office until the next annual meeting after such election, and until his successor shall be elected or appointed, and thereafter a treasurer shall be elected at each annual meeting for the term of one year.

6. To fix the amount in which the collector and treasurer shall give bonds for the due and faithful performance of the duties of their offices.

7. To designate a site for a school house, or for grounds to be used for playgrounds, or for agricultural, athletic center and social center purposes, or with the consent of the district superintendent of schools within whose district the school district lies, to designate sites for two or more school houses for the district. Such designation of a site for a school house, or for such grounds, can be made only at a special meeting of the district, duly called for such purpose by a written resolution in which the proposed site shall be described by metes and bounds, and which resolution must receive the assent of a majority of the qualified voters present and voting, to be ascertained by taking and recording the ayes and noes, or by ballot.

8. To vote a tax upon the taxable property of the district, to purchase, lease and improve such sites or an addition to such sites and grounds for the purposes specified in the preceding subdivision, to hire or purchase rooms or buildings for school rooms or school houses, or to build school houses; to keep in repair and furnish the same with necessary fuel, furniture and appurtenances, and to purchase such implements, apparatus and supplies as may be necessary to provide instruction in agriculture and other subjects, and for the organization and conduct of athletic, playground and other social center work.

9. To vote a tax, not exceeding twenty-five dollars in any one year, for the purchase of maps, globes, reproductions of standard works of art, blackboards and other school apparatus, and for the purchase of text-books and other school necessities for the use of poor scholars of the district.

10. To vote a tax for the establishment of a school library and the maintenance thereof, or for the support of any school library already owned by said district, and for the purchase of books therefor, and such sum as they may deem necessary for the purchase of a book-case.

11. To vote a tax to supply a deficiency in any former tax arising from such tax being, in whole or in part, "uncollectable."

12. To authorize the trustees to cause the school-houses, and their furniture, appurtenances and school apparatus to be insured by any insurance company created by or under the laws of this state, or any other insurance company authorized by law to transact business in this state.

13. To alter, repeal and modify their proceedings, from time to time, as occasion may require.

14. To vote a tax for the purchase of a book for the purpose of recording their proceedings.

15. To vote a tax to replace moneys of the district, lost or embezzled by district officers; and to pay the reasonable expenses incurred by district officers in defending suits or appeals brought against them for their official acts, or in prosecuting suits or appeals by direction of the district against other parties.

16. To vote a tax to pay whatever deficiency there may be in teachers' wages after the public money apportioned to the district shall have been applied thereto.

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\* So in original.



17. To vote a tax to pay and satisfy of record any judgments of a competent court which may have been or shall hereafter be obtained in an action against the trustees of the district for unpaid teachers' wages, where the time to appeal from said judgments shall have elapsed, or there shall be no intent to appeal on the part of such district, or the said judgments are or shall be of the court of last resort.

18. Whenever any district shall have contracted with the school authorities of any city, or other school district for the education therein of the pupils residing in such school district, or whenever in any school district children of school age shall reside so remote from the school house therein that they are practically deprived of school advantages during any portion of the school year, the inhabitants thereof entitled to vote are authorized to provide, by tax or otherwise, for the conveyance of any or all pupils residing therein to the schools of such city or district with which such contract shall have been made or to the school maintained in said district, and the trustees thereof may contract for such conveyance when so authorized in accordance with such rules and regulations as they may establish, and for the purpose of defraying any expense incurred in carrying out the provisions of this subdivision, they may if necessary use any portion of the public money apportioned to such district as a district quota.

Education Law, § 206, as amended by L. 1910, chs. 140 and 442; L. 1913, ch. 221; L. 1914, ch. 216. In effect April 7, 1914.

#### **Vote on proposition to expend money.**

In all propositions arising at said district meetings, involving the expenditure of money, or authorizing the levy of taxes, the vote thereon shall be by ballot, or ascertained by taking and recording the ayes and noes of such qualified voters attending and voting at such district meetings.

Education Law, § 207.

# SCHOOL DISTRICT OFFICERS; GENERAL PROVISIONS.

## **Officers of district.**

1. Each school district shall have from one to three trustees as the district determines, a clerk, a collector and if the district so decides a treasurer.

2. A union free school district shall have from three to nine trustees as the district shall determine. [Education Law, § 220.]

## **Qualifications of officers.**

Every school district officer must be able to read and write and must be a qualified voter of the district. [Education Law, § 221.]

## **Ineligibility to office.**

1. No school commissioner or supervisor is eligible to the office of trustee or member of a board of education, and no trustee can hold the office of district clerk, collector, treasurer or librarian.

2. A person removed from a school district office shall be ineligible to appointment or election to any district office for a period of one year from the date of such removal.

3. Not more than one member of a family shall be a member of the same board of education in any school district. [Education Law, § 222.]

## **Oath of office.**

No officer of a school district shall be required to take the constitutional oath of office. [Education Law, § 223.]

## **Terms of office.**

1. In a district having three or more trustees the full term of office of trustee shall be three years, but a trustee may be elected for one or two years as provided in this chapter.

2. In a district having a sole trustee the term of office of trustee shall be one year.

3. The term of office of all other district officers shall be one year.

4. One year, within the meaning of this section, is a school year. A school year shall be from August first until July thirty-first following.

Education Law, § 224, as amended by L. 1910, chs. 140 and 442.

## **Terms of officers of newly created district.**

The terms of all officers elected at the first meeting of a newly created district shall expire on the first Tuesday of May next thereafter.

Education Law, § 225, as amended by L. 1913, ch. 129. In effect March 25, 1913.

## **Number of trustees; determination of change.**

At the first annual meeting next after the erection of a district the electors shall determine, by resolution, whether the district shall have one or three trustees; and if they resolve to have three trustees, shall elect the three for one, two and three years, respectively, and shall designate by their votes for which term each is elected; thereafter in such district, one trustee shall be elected at each annual meeting to fill the office of the outgoing trustee.

2. The electors of any district having three trustees shall have power to decide, at any annual meeting, by a majority vote of those present and voting, whether the district shall have a sole trustee or three trustees. If they resolve to have a sole trustee, the trustees in office shall continue in office until their terms of office shall expire. No election of a trustee shall be had in the district until the offices of such trustees shall become vacant by the expiration

of their terms of office or otherwise, and thereafter but one trustee shall be elected for said district.

3 The electors of a district having but one trustee may determine at an annual meeting, by a two thirds vote of the legal voters present thereat, to have three trustees; and upon the adoption of a resolution to that effect, shall proceed to elect three trustees or such number as may be necessary to form a board of three trustees, in the same manner as provided in this section for the election of three trustees at the first annual meeting after the erection of a district, and thereafter in such district, one trustee shall be elected for three years, at each annual meeting, to fill the office of the outgoing trustee.

Education Law, § 226.

#### **Election of officers.**

1. All district officers shall be elected by ballot and the trustees shall provide a suitable ballot box for such purpose.

2. Two inspectors of election shall be appointed in such manner as the meeting shall determine, who shall receive the votes cast, canvass the same and announce the result of the ballot to the chairman.

3. A poll list containing the name of every person whose vote shall be received shall be kept by the clerk of the meeting.

4. The ballots shall be written or printed, or partly written and partly printed, containing the name of the person voted for and designating the office for which each is voted.

5. The chairman shall declare to the meeting the result of each ballot, as announced to him by the inspectors, and the persons having the majority of votes, respectively, for the several offices, shall be elected.

Education Law, § 227.

#### **Notice and acceptance of election.**

1. The district clerk shall forthwith notify in writing each person elected to office of his election and the date thereof.

2. Such person shall be deemed to have accepted the office, unless, within five days after the service of such notice, he shall file his written refusal with the clerk. The presence of any such person at the meeting which elects him to office, shall be deemed a sufficient notice to him of his election.

Education Law, § 228.

#### **Refusal of trustee to serve.**

A trustee who publicly declares that he will not accept or serve in the office of trustee, or who refuses or neglects to attend three successive meetings of the board, of which he is duly notified, without rendering a good and valid excuse therefor to the other trustees, vacates his office by refusal to serve.

Education Law, § 229.

#### **Penalty for refusal to serve or perform duty.**

1. Every person chosen or appointed to a school district office and being duly qualified to fill the same who shall refuse to serve therein shall forfeit the sum of five dollars.

2. Every person chosen or appointed to a school district office and not refusing to accept the same who shall wilfully neglect or refuse to perform any duty thereof shall by such neglect or refusal vacate his office and also forfeit the sum of ten dollars.

3. The school commissioner of the commissioner district wherein any such person resides may accept his written resignation of the office, and the filing

of such resignation and acceptance in the office of the district clerk shall be a bar to the recovery of either penalty under this section.

4. These penalties shall be for the benefit of the district for which such officer was appointed or elected. [Education Law, § 230.]

**Resignation of district officers.**

A school district officer may resign to a district meeting. Such officer shall also be deemed to have resigned if he files a written resignation with the school commissioner of his district and such commissioner endorses thereon his approval and files the same with the district clerk. [Education Law, § 231.]

**Vacating office.**

1. A school district office becomes vacant by the death, resignation, refusal to serve, incapacity, removal from the district or from office.

2. The collector or treasurer vacates his office by not executing a bond to the trustees, as herein required.

3. A trustee or a member of a board of education vacates his office by the acceptance of either the office of school commissioner or supervisor.

Education Law, § 232.

**Filling vacancy in office of trustee.**

1. A vacancy in the office of trustee in any district may be filled by election within thirty days after it occurs. If not so filled the school commissioner of the commissioner district, within which the school-house or principal school-house of the district is situated, may appoint a competent person to fill it.

2. If a vacancy in the office of trustee in a union free school district exists the commissioner of education may order a special election for filling such vacancy. When such special election is ordered the vacancy shall not be filled otherwise.

3. If such vacancy is supplied by a district meeting, it shall be for the balance of the unexpired term; but when such vacancy is supplied by appointment by a school commissioner it shall be only until the next annual meeting of the district. [Education Law, § 233.]

**Filling vacancy in office of clerk, collector or treasurer.**

A vacancy in the office of clerk, collector or treasurer, may be filled by appointment by the trustees of the district, and the appointees shall hold their respective offices until the next annual meeting of the district, and until their successors are elected and have qualified. [Education Law, § 234.]

**Notice of appointment to fill vacancy and filing thereof.**

Every appointment to fill a vacancy shall be forthwith filed, by the school commissioner or trustees making it, in the office of the district clerk, who shall immediately give notice of the appointment to the person appointed.

**District records, books, etc., are district property.**

The records, books and papers belonging or appertaining to the office of any officer of a school district are hereby declared to be the property of such district and shall be open for inspection by any qualified voter of the district at all reasonable hours, and any such voter may make copies thereof.

Education Law, § 236.

**Duties of district clerk.**

It shall be the duty of the clerk of each school district:

1. To record the proceedings of all meetings of the voters of his district

in a book to be provided for that purpose by the district, and to enter therein true copies of all reports made by the trustees to the school commissioner.

2. To give notice, in the manner prescribed by section one hundred ninety-one of the time and place of holding special district meetings called by the trustees.

3. To affix a notice in writing of the time and place of any adjourned meeting, when the meeting shall have been adjourned for a longer time than one month, in at least five of the most public places of such district, at least five days before the time appointed for such adjourned meeting.

4. To give the required notice of every annual district meeting.

5. To give notice immediately to every person elected or appointed to office of his election or appointment; and, also to report to the town clerk of the town in which the school house of his district is situated, the names and post office addresses of such officers, under a penalty of five dollars for neglect in each instance.

6. To notify the trustees of every resignation duly accepted by the school commissioner.

7. To keep and preserve all records, books and papers belonging to his office and to deliver the same to his successor. For a refusal or neglect so to do, he shall forfeit fifty dollars for the benefit of the schools of the district, to be recovered by the trustees.

8. To obey the order of the school commissioners as to depositing the books, papers and records of his office in the town clerk's office in case the district shall be dissolved.

9. To attend all meetings of the board of trustees when notified, and keep a record of their proceedings in a book provided for that purpose.

10. To call special meetings of the inhabitants whenever all the trustees of the district shall have vacated their office.

11. To immediately notify the county treasurer of the name and address of persons elected to the office of district treasurer, if a treasurer is elected, and of the district collector.

Education Law, § 250; as amended by L. 1916, ch. 314.

**Powers of trustees when vacancies on board exist.**

1. While there is one vacancy in the office of trustee, the two trustees shall have all the powers and be subject to all the duties and liabilities of the

three. And while there are two such vacancies, the trustee in office shall have all the powers and be subject to all the duties and liabilities of the three, as though he were a sole trustee.

2. When a vacancy shall occur in the office of trustee, the board shall immediately call a special meeting of the district to supply such vacancy.

Education Law, § 274.

#### **Removal of school officers; withholding public money.**

1. Whenever it shall be proved to his (commissioner of education) satisfaction that any trustee, member of a board of education, clerk, collector, treasurer, school commissioner, superintendent of schools or other school officer has been guilty of any wilful violation or neglect of duty under this chapter, or any other act pertaining to common schools or other educational institution, participating in state funds, or willfully disobeying any decision, order or regulation of the regents or of the commissioner of education, said commissioner may, by an order under his hand and seal, which order shall be recorded in his office, remove such school officer from his office.

2. Said commissioner of education may also withhold from any district or city its share of the public money of the state for wilfully disobeying any provision of law or any decision, order or regulation as aforesaid.

Education Law, § 95.

#### **Use of school house for polling places, registration and political meetings.**

School houses and the grounds connected therewith and all property belonging to the district shall be in the custody, and under the control and supervision of the trustees or board of education of the district. The trustees or board of education may adopt reasonable regulations for the use of such school houses, grounds or other property when not in use for school purposes, for such other public purposes as are herein provided. Such regulations shall not conflict with the provisions of this chapter and shall conform to the purposes and intent of this section and shall be subject to review on appeal to the commissioner of education as provided by law. The trustees or board of education of each district may, subject to regulations adopted as above provided, permit the use of the school house and rooms therein, and the grounds and other property of the district, when not in use for school purposes, for any of the following purposes:

5. For polling places for holding primaries and elections, and for the registration of voters, and for holding political meetings. But no such use shall be permitted unless authorized by a vote of a district meeting, held as provided by law. It shall be the duty of the trustees or board of education to call a special meeting for such purpose upon the petition of at least ten per-



centum of the qualified electors of the district. If such authority be granted by a district meeting it shall be the duty of such trustees or board of education to permit such use, under reasonable regulations to be adopted by such trustees or board until another meeting held in like manner shall have revoked such authority.

Education Law, § 455, as amended by L. 1913, ch. 221; L. 1917, ch. 214.

## BOARDS OF EDUCATION IN GENERAL.

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### **Boards of education corporate body.**

The board of education of each union free school district or city is hereby created a body corporate and it shall, at its first meeting and at each annual meeting thereafter, elect one of its members president.

Education Law, § 300.

### **Board of education in district whose boundaries are not coterminous with those of an incorporated village or city.**

1. Whenever a union free school district shall be established pursuant to the provisions of sections one hundred and forty-one to one hundred and forty-five of this chapter and the boundaries of such district shall not be coterminous with the boundaries of an incorporated city or village, it shall be the duty of the meeting at which such union free school district is established to elect by ballot not less than three nor more than nine trustees, who shall, by the order of such meeting, be divided into three classes, the first to hold until one, the second until two, and the third until three years from the first Tuesday of August next following, except as in the next section provided. Thereafter there shall be elected in such districts, at the annual meeting, trustees to supply the places of those whose terms of office, by the classification aforesaid, expire.

2. The trustees thus elected, shall enter at once upon their offices, and the office of any existing trustees in such districts, before the establishment of a union free school therein, shall cease, except for the purposes stated in section one hundred and thirty-five of this chapter. The said trustees and their successors in office shall constitute the board of education of the union free school district thus established.

Education Law, § 301.

### **Board of education in district whose boundaries are coterminous with those of an incorporated village or city.**

Whenever said board of education shall be constituted for any district whose limits correspond with those of any incorporated village or city, the trustees so elected shall, by the order of such meeting, be divided into three classes: The first class to serve until one; the second, until two; and the third, until three years after the date of the next charter election in such village or city, and their regular term of service shall be computed from the several dates of such charter election. Thereafter, there shall be annually elected in such villages and cities, at the charter elections, by separate ballot, to be indorsed "school trustee," in the same manner as the charter officers thereof, trustees of the said union free schools, to supply the places of those whose terms by the classification aforesaid expire.

Education Law, § 302.

**Provisions for separate elections in certain districts.**

1. In union free school districts whose limits do not correspond with those of an incorporated village or city, and in which the number of children of school age exceeds three hundred, as shown by the last annual report of the board of education to the school commissioner, the qualified voters of any such district may by a vote of a majority of those present and voting, at any annual meeting, or at any duly called special meeting, to be ascertained by taking and recording the ayes and noes, determine that the election of the members of the board of education shall be held on the Wednesday next following the day designated by law for holding the annual meeting of said district.

2. Until such determination shall be changed, such election shall be held on the Wednesday next following the day on which such annual meeting of such district shall be held, between the hours of twelve o'clock noon and four o'clock in the afternoon at the principal school-house in the district, or at such other suitable place as the trustees may designate.

3. When the place of holding such election is other than at the principal school-house, the trustees shall give notice thereof by the publication of such notice, at least one week before the time of holding such election, in some newspaper published in the district, or by posting the same in three conspicuous places in the district. The trustees may, by resolution, extend the time of holding the election from four o'clock until sunset.

4. Such members of the board of education as may be present, shall act as inspectors of election. If a majority of such board shall not be present at the time of opening the polls, those members of the board in attendance may appoint any of the legal voters of the district present, to act as inspectors in place of the absent trustees, and if none of the board of education shall be present at the time of opening the polls, the legal voters present may choose three of their number to act as inspectors.

5. The clerk of the board of education shall attend at the election and record in a book, to be provided for that purpose, the name of each elector as he deposits his ballot. If the clerk of the board of education shall be absent, or shall be unable or refuse to act, the board of education or inspectors of election shall appoint some person who is a legal voter in the district to act in his place. Any clerk or acting clerk who shall neglect or refuse to record the name of a person whose ballot is received by the inspectors, shall be liable to a fine of twenty five dollars, to be sued for by the supervisor of the town.

6. The board of education shall, at the expense of the district, provide a suitable box in which the ballots shall be deposited as they are received. Such ballots shall contain the names of the persons voted for, and shall designate the office for which each of said names is voted. The ballots may be either written or printed, or partly written and partly printed. The inspectors immediately after the close of the polls shall proceed to canvass the votes. They shall first count the ballots to determine if they tally with the number of names recorded by the clerk, and if they exceed that number, enough ballots shall be withdrawn to make them correspond. Such inspectors shall count the votes and announce the result. The persons having a plurality of the votes respectively for the several offices shall be elected, and the clerk shall record the result of such ballot and election as announced by the inspectors.

7. Whenever the time for holding such election, as aforesaid, shall pass without such election being held in any such district, a special election shall be called by the board of education, but if no such election be called by said board within twenty days after such time shall have passed, the school commissioner or the commissioner of education may order any inhabitant of said district to give notice of such election in the manner prescribed by section one hundred and ninety three; and the officers elected at such special election shall hold their respective offices only until the next annual election, and until their successors are elected and shall have qualified, as in this chapter provided.

8. The foregoing provisions shall not apply to union free school districts in cities, nor to union free school districts whose boundaries correspond with those of an incorporated village, nor to any school district organized under a special act of the legislature, in which, the time, manner and form of the election of district officers shall be different from that prescribed for the election of officers in union free school districts, organized under the general law, nor to any of the union free school districts in the counties of Suffolk, Chertango, Warren and Saint Lawrence.

Education Law, § 303, as amended by L. 1910, chs. 140 and 442; L. 1917, ch. 270.

#### **Determination of election disputes.**

All disputes concerning the validity of any district election or of any of the acts of the officers of such election shall be referred to the commissioner of education for determination and his decision in the matter shall be final and not subject to review. The commissioner may in his discretion order a new election.

Education Law, § 304.

#### **Election and organization of board of education in new district where union free school district containing two incorporated villages is divided.**

1. Within ten days after the school commissioner shall have designated any separate school district organized under the provisions of sections one hundred and thirty and one hundred and thirty one of this chapter, he shall call a special meeting of the qualified voters of such school district at a time and place to be named by him to elect a board of education to consist of six members, two of whom shall be elected for one year, two for two years and two for three years from the date of the annual school meeting next succeeding such special meeting. The call for such special meeting shall be published in the manner provided in section one hundred and thirty for calling a special meeting to determine as to whether the school district shall be divided.

2. The school commissioner shall call such special meeting to order and the voters present shall elect a chairman and secretary for such meeting and appoint three tellers to canvass the votes cast. After the votes shall have been canvassed the chairman and secretary shall forthwith certify the result of such canvass to the said school commissioner, who shall within five days thereafter convene the members of the board of education, shown by said certificate to have been elected, for the purpose of organization, and said certificate of the result of such canvass shall thereupon become a part of the record of said school district.

Education Law, § 305.

**Change in number of members of board of education in union free school district whose boundaries are coterminous with those of an incorporated village or city.**

The number of members of the board of education of a union free school district whose limits correspond with those of an incorporated village or city, may be increased to not more than nine or decreased to not less than three in the following manner:

1. The board of education of such union free school district, shall, upon the application of at least fifteen resident taxpayers of such district, submit to a special meeting, held at least thirty days prior to the annual charter election, in such village or city, a proposition for the increase or decrease of the number of members of the board of education to a number specified in the proposition.

2. Such special meeting shall be called and held in the manner prescribed by subdivision two of section one hundred and ninety-three of this chapter.

3. If such proposition is adopted and it is determined thereby to increase the number of members of the board of education of such district, there shall be elected at the next ensuing annual village or city election, a sufficient number of members of the board of education so that the total number of members of the board will be the number specified in such proposition. Such additional members shall be elected for such terms so that as nearly as possible the terms of one-third of the members of such board will expire annually. Successors to such additional members shall be elected in like manner.

4. If such proposition is adopted and it is determined thereby to decrease the number of the board of education in such district, no members of the board of education of such district shall thereafter be elected until by expiration of term the number of members of the board of education will be less than the number specified in such proposition; and thereafter the number of members of the board of education of such district shall be the number specified in such proposition. Not more than one proposition under this section shall be submitted in any calendar year.

Education Law, § 307.

**Change in number of members of board of education in union free school district whose boundaries are not coterminous with those of an incorporated village or city.**

1. The number of members of the board of education of a union free school district whose limits do not correspond with those of an incorporated village or city may be increased or decreased at an annual meeting by a majority vote of the qualified voters present and voting to be ascertained by taking and recording the ayes and noes. The number of such board shall not be increased to more than nine nor decreased to less than three.

2. No vote shall be taken upon the proposition to increase or decrease the number of members of such board of education unless the notice of the annual meeting shall contain a statement to the effect that the voters of such district will vote upon such proposition. The board of education of any such district shall, upon the application of at least fifteen voters of such district, include in the notice of the annual meeting a statement that the proposition to in-

crease or decrease such board will be presented to the annual meeting for determination. If the board refuses or fails to give such notice the notice may be given in such manner as the commissioner of education may direct.

3. If any such board shall consist of less than nine members and such meeting shall determine to increase the number, such meeting shall elect the additional number so determined upon and shall divide such number into three classes, the first to hold office one year, the second two years and the third three years.

4. If such meeting shall determine to diminish the number of members composing such board, no election shall be held in such district to fill the vacancies of the outgoing members until the number of such members shall correspond to the number which such meeting shall determine to compose such board.

Education Law, § 308.

#### **Power of removal of member of board of education.**

For cause shown, and after giving notice of the charge and opportunity of defense, the commissioner of education may remove any member of a board of education. Willful disobedience of any lawful requirement of the commissioner of education, or a want of due diligence in obeying such requirement or willful violation or neglect of duty is cause for removal.

Education Law, § 309.

#### **Powers and duties of boards of education.**

The said board of education of every union free school district shall have power, and it shall be their duty:

16. To fill any vacancy which may occur in said board by reason of the death, resignation, removal from office or from the school district, or refusal to serve, of any member or officer of said board; and the person so appointed in the place of any such member of the board shall hold his office until the next election of trustees.

17. To remove any member of their board for official misconduct. But a written copy of all charges made of such misconduct shall be served upon him at least ten days before the time appointed for a hearing of the same; and he shall be allowed a full and fair opportunity to refute such charges before removal.

Education Law, § 310.



# BOARD OF EDUCATION IN THE SEVERAL CITIES OF THE STATE.

(Article 33-a [§§ 865-881], added by L. 1917, ch. 786, in effect June 8, 1917.)

## Board of education.

1. A board of education is hereby established in each city of the state. The educational affairs in each city shall be under the general management and control of a board of education to consist of not less than three and not more than nine members, to be chosen as hereinafter provided, and to be known as members of the board of education. The number of members on the board of education of each city shall be as follows:

a. A city having nine members or less on its board of education shall continue to have such number of members on said board as such board contains at the time this law goes into effect.

b. A city having a population of one million or more shall have a board of education to consist of seven members.

c. In all other cities of the state the number of members of the board of education shall be nine.

2. A board of education in office at the time this law goes into effect except as hereinafter provided shall continue in office and possess the powers and duties of a board of education under this article until its successor shall be chosen as provided herein.

3. Except as otherwise provided in this act the provisions of this act shall apply to and govern the operation and administration of the public school system and other educational affairs in a city which is created after this act goes into effect. The authorities in charge of the operation and administration of the schools and other educational affairs of the school districts included within such city at the time the act creating such city goes into effect shall continue in charge thereof until the first Tuesday in May thereafter. On such first Tuesday in May a board of education consisting of five members shall be elected at the annual school election in accordance with the provisions of this chapter. One member of such board shall be elected for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the said first Tuesday of May. As their terms expire their successors shall be chosen for a full term of five years.

4. In a city of the third class, created or to be created by the consolidation of two cities situated, respectively, in two adjoining counties, in which, at the time of the creation of such consolidated city, a school district shall be coterminous with the boundaries of one such city and there shall be in the other city a school district wholly within its boundaries but not coterminous therewith, such districts shall constitute the city school district of such consolidated city, and the board of education thereof shall be a city board of education, within the meaning of this article, but such board shall be constituted and organized as provided in this subdivision. The terms of office of the members of the respective boards of education of the two districts so consolidated shall expire thirty days after the first mayor of such new city takes office. Within such period of thirty days after the first mayor of such new city takes office he shall appoint a board of education for such consolidated district, to consist of five members whose terms of office shall begin thirty days after such mayor takes office. The terms of office of the members of such board of education shall be respectively one, two, three, four and five years, except that the term of office shall end on the first Tuesday in May in each year. As their terms of office expire their successors shall be appointed by the mayor of such city for a full term of five years each.

Education Law, § 865, amended by L. 1919, ch. 299.

**Board of education; eligibility; how chosen; term of office; vacancies.**

1. No person shall be eligible to the office of member of a board of education who is not a citizen of the United States and who has not been a resident of the city for which he is chosen for a period of at least three years immediately preceding the date of his election or appointment.

2. In a city having a population of one million or more and divided into boroughs, there shall be a board of education consisting of seven members. Two members of such board shall be residents of the borough having the largest population, two shall be residents of the borough having the second largest population, and one shall be a resident of each of the other boroughs in such city. The mayor shall appoint such members on the first Wednesday in January, nineteen hundred and eighteen, and in appointing them shall designate the terms of office of such members so that the term of one member shall expire on the first Tuesday in May, nineteen hundred and nineteen; one on the first Tuesday in May, nineteen hundred and twenty; one on the first Tuesday in May, nineteen hundred and twenty-one; one on the first Tuesday in May, nineteen hundred and twenty-two; one on the first Tuesday in May, nineteen hundred and twenty-three; one on the first Tuesday in May, nineteen hundred and twenty-four; one on the first Tuesday in May, nineteen hundred and twenty-five. Their successors shall be chosen for full terms of seven years. Thereafter, as vacancies occur on such board they shall be filled from the several boroughs so that each borough shall always be represented on such board as required under this subdivision. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term.

3. In each city in which the law provides, prior to the time this article goes into effect, that the members of the board of education shall be chosen by vote of the people at an election separate from the general or municipal election, the members of the board of education of that city shall hereafter be elected by the voters at large at the annual school election.

4. In each city in which the law provides, prior to the time this article goes into effect, that the members of the board of education shall be chosen by vote of the people at a general or municipal election, the members of such board of education shall continue to be so chosen by the voters at large at either a general or municipal election or at both, and for the terms prescribed by such law.

4-a In each city of the state in which, under laws relative to members of the board of education or school commissioners, in existence prior to June eight, nineteen hundred and seventeen, it was provided that such members or commissioners comprising the board of education of such city shall be, in part, appointed by the common council of such city, and, in part, elected by the qualified electors of commissioner districts into which such city is divided, the members or commissioners comprising such board of education shall continue to be appointed by the common council, or elected by such commissioner districts, in the manner and for the terms prescribed by such laws, and so much of the said laws as pertains to the number of members of the board of education of such city, the division of the city into commissioner districts, the election of commissioners or members of the board by the qualified electors of such districts, and the appointment of other members or commissioners for the city at large by the common council of such city, shall remain in full force and effect notwithstanding the provisions of the section hereby amended. The provisions of article seven-a of this chapter, as added by chapter seven hundred and ninety-one of the laws of nineteen hundred and seventeen, which pertain to the date of school elections in cities, qualifications of electors, the places of holding elections, notices of elections, the preparation of poll lists and the correction thereof, the inspectors of election and the organization of

the boards of inspectors in election districts, the nomination of candidates for members of the board and the ballots containing the names of such candidates, the conduct of elections, the canvass of votes, return to the board of education and declaration of results, and the use of voting machines, shall apply, so far as may be, to the election of the members of the board of education in such city by the qualified electors of commissioner districts established as provided by law.

5. In each other city of the state members of the board of education shall be appointed from the city at large by the mayor except as otherwise provided herein, but in a city having a population of four hundred thousand or more and less than one million, such appointments shall be subject to confirmation by the council. The members of the board of education in a city having a population of four hundred thousand or more and less than one million shall be appointed by the mayor on January fifteenth, nineteen hundred and eighteen, subject to confirmation by the council, for terms of one, two, three, four and five years from the first Tuesday in May, nineteen hundred and seventeen, and their successors shall be appointed as provided herein for five years.

6. If the number of members on a board of education in a city in which the members of such board are chosen at an annual school, general or municipal election exceeds nine, no person shall be elected to membership thereon as vacancies occur until the number of members on such board shall be less than nine.

7. If the number of members on a board of education in a city in which the members of such board are appointed by the mayor exceeds nine, the term of office of each member of such board shall cease and terminate when this act takes effect, except as otherwise provided herein, and the mayor in each of such cities shall thereupon appoint a board of education to consist of nine members. Such members shall be appointed for the following terms: two members to serve until the first Tuesday in May, nineteen hundred and eighteen; two to serve until the first Tuesday in May, nineteen hundred and nineteen; two until the first Tuesday in May, nineteen hundred and twenty; two until the first Tuesday in May, nineteen hundred and twenty-one, and one until the first Tuesday in May, nineteen hundred and twenty-two. As their terms expire, their successors shall be chosen for a full term of five years.

8. The persons either elected or appointed to membership for a full term on a board of education, and their successors in office, shall be elected or appointed for terms of five years each, except as otherwise provided in this act.

9. In a city having less than five members on its board of education the term of office of such members shall be for the period of time specified in the law in effect prior to the time this act goes into effect. As the terms of office of such members expire their successors shall be chosen for like terms.

10. (a) When vacancies occur in a board of education by expiration of term, prior to the first Tuesday in May, nineteen hundred and twenty-one, in a city in which the members of such board are elected at the annual school election held on the first Tuesday in May, such vacancies shall be filled for such terms that the terms of one-fifth, or as near as may be, of all the members of such board shall expire on the first Tuesday in May, nineteen hundred and twenty-one and annually thereafter.

(b) Where such vacancies have been filled by appointment by the mayor as required herein since June eighth, nineteen hundred and seventeen, or shall be hereafter so filled, the mayor shall designate the terms for which such persons so appointed are to hold office so that the terms of one fifth, or as near as may be, of the members of such board shall expire on the first Tuesday in May, nineteen hundred and twenty-one and annually thereafter.

(c) The persons so elected or appointed shall take office immediately thereafter, except as otherwise provided herein.

11. If a vacancy occurs other than by expiration of term of office in the office of a member of a board of education in a city in which such members are elected at a school, or general, or municipal election, such vacancy shall be filled by appointment by the mayor until the next annual school election is held, and such vacancy shall then be filled at such election for the unexpired portion of such term.

12. If such vacancy occurs in such office in a city in which the members of the board of education are appointed by the mayor, such vacancy shall be filled by appointment by the mayor of such city for the unexpired portion of such term, but in a city having a population of four hundred thousand or more and less than one million, such appointment shall be subject to confirmation by the council.

Education Law, § 866, as amended by L. 1918, ch. 252; L. 1919, ch. 106.  
Meetings of board of education.

1. The annual meeting of a board of education shall be held on the second Tuesday in May, at four o'clock in the afternoon, at which meeting the board shall select a president for the ensuing year.

2. Each of such boards shall also fix the day and hour for holding regular board meetings which shall be at least as often as once each month and shall also prescribe a method for calling special meetings of such board.

Education Law, § 867, as amended by L. 1918, ch. 252.

#### Tax election.

1. In a city having a population of less than seventy-five thousand, according to the federal census of nineteen hundred and ten, the board of education may call a tax election, by giving notice thereof as notice is required under the education law of an annual school election and submit to those qualified to vote at such election a proposition to expend a sum of money in excess of twenty-five thousand dollars for any of the purposes enumerated in paragraph c of subdivision one of section eight hundred and seventy-seven of this chapter. The provisions of law relating to and governing annual school elections, including inspectors, notices, qualifications of voters, challenges, hours for keeping polls open, penalties, canvass of votes, filing returns, supplying ballots, and all other matters relating to an annual election shall apply to and govern, so far as may be practicable, a tax election except in a city in which the election of members of the board of education is held at a general or municipal election. In such cities the law applying to and governing such general or municipal elections shall apply to and govern such tax election.

2. In such a city in which the members of the board of education are elected at the general or municipal election, a tax election for like purposes may be held by direction of the board of education. The provisions of law regulating such general or municipal elections in such cities shall apply to and govern the method of calling and holding tax elections in said cities.

3. In the city of Oswego the common council shall continue to have power, upon the request of the board of education, to call and hold taxpayers' elections to vote upon the question of issuing bonds of the city, under sections forty-six and forty-seven of the charter of such city, for the purposes enumerated in paragraph c of subdivision one of section eight hundred and seventy-seven of this chapter, in the same manner, and with the same force and effect, as prior to the eighth day of June, nineteen hundred and seventeen; and to issue such bonds for such purposes, or any of them, pursuant to the provisions of such charter, provided a majority of such taxpayers voting at such election approve of such issue.

4. In the city of Poughkeepsie the common council shall continue to have power, upon the request of the board of education, to call and hold taxpayers' elections to vote upon the question of issuing bonds of the city under sections ninety-nine and one hundred of the charter of said city, for the purposes enumerated in paragraph c of subdivision one of section eight hundred and seventy-seven of this chapter, in the same manner, and with the same force and effect, as prior to the eighth day of June, nineteen hundred and seventeen, and to issue such bonds for such purposes or any of them, pursuant to the provisions of such charter, provided a majority of the taxpayers voting at such election approve of such issue.

Education Law, § 878, as amended by L. 1919, ch. 176; L. 1920, ch. 498.

# SCHOOL ELECTIONS IN CERTAIN CITIES

(Article 7-a [§ 208-216], added by L. 1917, ch. 781, in effect June 9, 1917.)

## Application of article.

This article shall apply to each city in the state, in which members of the board of education are elected by the qualified electors of such city at an election other than a general or municipal election.

Education Law, § 208.

## Annual school election.

1. An annual election shall be held on the first Tuesday of May in each city to which this article applies.

2. The polls of such election shall be open from twelve o'clock noon until eight o'clock in the evening.

Education Law, § 209.

## Qualifications of voters.

A person shall be entitled to vote at a school election in such city who is:

1. A citizen of the United States.

2. Twenty-one years of age.

3. A resident within the election district for a period of thirty days next preceding the election at which he offers to vote; and who in addition thereto possesses one of the following four qualifications:

a. Owns or has real property in such district or is in the possession of such property under a contract of purchase, assessed upon the last preceding assessment-roll of the city, or

b. Is the parent of a child of school age, provided such child shall have attended the public schools in the city in which the election is held for a period of at least eight weeks during the year preceding such election; or

c. Not being the parent, has permanently residing with him a child of school age who shall have attended such public schools for a period of at least eight weeks during the year preceding such election; or

d. Owns personal property, assessed on the last preceding assessment roll of the city, exceeding fifty dollars in value, exclusive of such as is exempt from execution.

No person shall be deemed to be ineligible to vote at any such election, by reason of sex, who has the other qualifications required by this section. In any city school district whose boundaries are coterminous with the boundaries of the city, any person shall be permitted to vote at any such election in the school election district within which he resides on the date of the election, provided he shall have been resident of the city school district for the period of thirty days next preceding the date of the election, and provided he shall possess the other qualifications which entitle him to vote as prescribed in this section.

Education Law, § 210, as amended by L. 1921, ch. 354.

## Division of city into districts; elections held in schoolhouses.

The board of education of each such city shall adopt a resolution on or before the first day of April, preceding the first annual school election held hereunder, dividing the city into school election districts. The city shall be so divided, that if circumstances will permit, there shall be a schoolhouse in each district and each district shall contain not more than one thousand qualified voters. The districts thus formed shall continue in existence until

modified by resolution of the board of education. Such resolution shall accurately describe the boundaries of such districts by streets, alleys and highways, when practicable, and shall so far as may be, include one or more of the regular election districts of such city. School-elections shall be held in such districts so far as may be possible in the public schoolhouses therein. If there is no public schoolhouse in a district the board of education shall by resolution designate the place where the election in such district shall be held.

Education Law, § 211.

#### **Notices of election.**

The board of education shall cause a notice of the annual school election to be published at least once in each week for the four weeks preceding such election, in at least two newspapers published in such city. Such notice shall state the day of the election and the hours during which the polls are to be open, shall accurately describe the boundaries of the school election districts into which the city is divided, and shall specify the schoolhouses or other places therein where such election will be held. Such notice shall also state that poll lists prepared by the clerk of the board of education as required by this article containing the names of the qualified electors of each school election district are on file and may be examined at the office of such clerk or of the superintendent of schools of such city.

Education Law, § 212.

#### **Preparation of poll lists in certain cities; correction.**

1. The secretary or clerk of the board of education in each such city having a population of over fifty thousand shall on or before the first day of April in each year prepare a poll list for each school election district which shall contain the names of all persons residing in such district who shall be qualified to vote for candidates for the offices of members of the board of education at the ensuing election. The names on such list shall be arranged alphabetically by the surnames, and the place of residence by street and number of each person named on such list, if any, and if not, some description accurately locating such place of residence shall be given on such list.

2. Such list shall be placed on file in the office of the secretary or clerk of the board of education or some other suitable and accessible place to be designated by the board of education where it may be examined by persons interested therein during the office hours of such secretary or clerk for thirty days preceding the annual school election and from four to eight o'clock in the evening of each Friday and Saturday of the four weeks immediately preceding the election. The secretary or clerk of the board of education or some person to be designated by such board shall attend at such office at such times, and shall permit such lists to be examined by the public.

3. Any person whose name is not upon such list, who is or will be a qualified voter of the city at such election, may file a written statement with the secretary or clerk of the board of education giving his name, place of residence, occupation and the school election district in which he resides, and specifying the qualifications which entitle him to vote at such election. The name of such voter shall thereupon be placed on such poll list. If such person appears before the secretary or clerk of the board of education and



furnishes the information above required, such secretary or clerk shall place his name upon the poll list.

4. If a qualified voter is a resident of a school election district and his name appears on a poll list as a resident of another district, a written statement may be filed by such voter with the secretary or clerk of the board of education showing his correct residence and the name of such voter shall thereupon be stricken from such poll list and placed upon the proper poll list.

5. The board of education shall furnish blanks for such statements, which shall be used by the voters in presenting the facts above prescribed. No change or alteration of such list shall be made by any person before the correction and revision thereof as hereinafter provided.

6. Such statements and challenges shall be received and preserved by the secretary or clerk of the board or other person designated by the board, and on the Monday preceding the annual election such secretary or clerk shall correct and revise each of such duplicate lists by striking therefrom and inserting in their proper places the names of persons who have filed the statements above referred to and shall indicate on such lists the persons whose qualifications as voters have been challenged.

7. Such corrected and revised lists shall be filed in the office of the secretary or clerk of the board of education. Such board shall cause a copy of the list of each election district to be delivered on the day of election, before the opening of the polls therein, to the inspectors of such districts, at the place where the election in such district is to be held.

8. A qualified voter may, upon the examination of such list, file a written challenge of the qualifications as a voter of any person whose name appears on such list. Such challenge shall be written and shall be on blanks to be furnished by the board of education.

9. In each city of the state having a population of fifty thousand or less by the last preceding census any person possessing qualification which entitle him or her to vote at a school election as prescribed in section two hundred and ten of this chapter may vote at any such election held within his school election district without any previous registration or poll listing under the provisions of subdivisions one to eight, both inclusive, of this section. The provisions of sections two hundred and eight to two hundred and eighteen, both inclusive, except as herein modified, are hereby made applicable to the conduct of elections in the school election districts of such cities having a population of fifty thousand or less in all respects not inconsistent with the provisions hereof.

Education Law, § 213, as amended by L. 1921, ch. 384.

#### **Inspectors of election; organization.**

The board of education shall appoint not less than ten days prior to each school election three qualified voters residing in each school election district to act as inspectors of elections in such district at the annual election. The secretary or clerk of the board of education shall give written notice of appointment to the persons so appointed. If a person appointed an inspector of election refuses to accept such appointment or fails to serve, the board may appoint a qualified voter of the school election district to fill the vacancy. Not more than two additional inspectors of elections for each district may be appointed for one or more of such school election districts, when, in the opinion of the board, special circumstances exist requiring the services of such additional inspectors. Such inspectors shall, before opening the polls in the election district for which they are appointed, organize by electing one of their number as chairman, and one as poll clerk. Each inspector shall receive for his services a compensation of three dollars, to be paid out of the school funds in the same manner as other claims against the city or district.

Education Law, § 214.

#### **Nomination and ballot.**

1. Candidates for members of the board of education in a city to which this article applies shall be nominated by petition directed to the board of

education and signed by at least thirty persons qualified to vote at school elections in such city. Such petition shall contain the name and residences of the candidates for the vacancies in the board of education to be filled at the annual election and shall state whether such candidates are nominated for full terms or for the unexpired portions of such terms. Such petitions shall be filed with the secretary or clerk of the board of education on or before the tenth day preceding the day of the annual election.

2. The board of education shall cause to be printed official ballots containing the names of all candidates as above provided. The ballots shall separately state whether the persons named thereon are candidates for full terms or for unexpired terms. The names of the candidates shall be arranged alphabetically according to their surnames in columns under titles or designations showing whether they are to be elected for full terms or unexpired terms. Blank spaces shall be provided so that voters may vote for candidates who have not been nominated for the offices to be filled at such election. The form of such ballots shall conform substantially to the form of ballots used at general elections as prescribed in the election law. Such ballots shall be printed at the expense of the city and the cost thereof shall be paid out of funds appropriated for school purposes and available therefor.

3. There shall be delivered to the inspectors in each school election district on the day of the annual election a supply of such ballots which shall at least equal the number of qualified voters in such district as appears from the poll list thereof.

4. Such ballots shall have printed thereon instructions as to the marking of the ballots and the number of candidates for the several offices for which a voter is permitted to vote.

5. If official ballots are not furnished as above provided, an election of members of a board of education in such city shall not be declared invalid or illegal because of the use of ballots which do not conform to the requirements of this section or of the provisions of the election law, provided the intent of the voter may be ascertained from the use of such irregular or defective ballots and such use was not fraudulent and did not substantially affect the result of the election.

Education Law, § 215.

#### Conduct of election; challenges.

1. Such election shall be conducted, so far as may be, in accordance with the provisions of the election law, relative to general elections, except as otherwise provided herein. Ballot boxes shall be provided by the board of education for each school election district, one to contain the ballots voted and the other for the rejected or defective ballots.

2. All persons whose names appear upon the poll list as residing in such election district shall be permitted to vote and shall be given ballots for such purpose.

3. Booths shall be provided and voters shall be required to enter such booths for the purpose of marking their ballots. The ballots when presented to the inspector shall be folded so as to conceal the names of the candidates for whom the voter has voted.

4. All voters entitled to vote who are in the place where the election is held at or before the time of closing the polls shall be allowed to vote. The

inspectors shall keep a poll list, containing the name and address of each qualified elector who votes at such election for the candidates or propositions or questions voted for thereat.

5. Any qualified voter of a district may challenge the right of a person to vote at the time when he requests a ballot. All persons named upon the poll list as having been challenged prior to the day of the election shall also be challenged before they are given ballots to vote. The chairman of the board of inspectors shall administer to each person so challenged the following oath: "I do solemnly swear (or affirm) that I am a citizen of the United States; that I am of the age of twenty-one years or more; that I have been for the thirty days last past an actual resident of this city; and that in addition thereto I possess one of the four qualifications prescribed by section two hundred and ten of the education law, to wit:--(Here state facts upon which qualifications are claimed), and am therefore qualified to vote at this election." The chairman of the board of inspectors shall before administering such oath inform the person so challenged of the four qualifications prescribed by such section. If the person challenged so swears or affirms, he shall be permitted to vote at such election; but if he shall refuse to so swear or affirm, he shall not be given a ballot or be permitted to vote.

6. A person who wilfully swears or affirms falsely as to his right to vote at such election after his right to vote has been challenged is guilty of perjury and may be punished in the manner provided by law for the punishment of such crime. A person who is not qualified to vote at such election who shall vote thereat, although not challenged, shall be guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment.

Education Law, § 216.

#### **Canvass of votes and return to board of education; declaration of result.**

1. Immediately upon the close of the polls the inspectors of each school election district shall count the ballots found in the ballot box without unfolding them, except so far as is necessary to ascertain that each ballot is single. They shall compare the number of ballots found in the ballot box with the number of persons recorded on the poll list as having voted at the election. If the number of ballots found in the ballot box shall exceed the number of names, such ballots shall be replaced without being unfolded in the box from which they were taken and shall be thoroughly mingled in such box and one of the inspectors designated by the board shall then publicly draw out as many ballots as shall be equal to the number of excess ballots. The ballots so drawn out shall be enclosed without unfolding in an envelope which shall be sealed and endorsed with a statement of the number of such excess ballots withdrawn from the box and shall be signed by the inspector who withdrew such ballots. Such envelope with the excess ballots therein shall be placed in the box for the defective or spoiled ballots.

2. The ballots shall be counted or canvassed by the inspectors in the manner provided for the canvassing of ballots at a general election except as otherwise provided herein. The votes cast for each candidate shall be tallied and counted by the inspectors and a statement shall be made containing the names of each candidate receiving votes in such district and the

number of votes cast for each candidate. Such statement shall also give the number and describe the ballots which are declared void and shall also specify the number of wholly blank ballots cast. Such statements shall be signed by the inspectors. The ballots which were declared void and not counted shall be enclosed in an envelope which shall be sealed and endorsed as containing void ballots and signed by the inspectors. Such envelope shall be placed in the ballot box containing the defective and spoiled ballots.

3. After the ballots are counted and the statements have been made as required herein the ballots shall be replaced in the ballot box. Each box shall be securely locked and sealed and deposited by an inspector designated for the purpose with the secretary or clerk of the board of education. The unused ballots shall be placed in a sealed package and returned by the inspector designated for such purpose to the said secretary or clerk at the same time that such ballot boxes are delivered to him. The statement of the canvass of the votes shall be delivered to the secretary or clerk of the board of education on the day following the annual election.

4. The board of education shall meet at the usual place of meeting at eight o'clock in the evening of the day following such election and shall forthwith examine and tabulate the statements of the result of the election in the several school election districts. The said board shall canvass the returns as contained in such statements and shall determine the number of votes cast for each candidate in the several school election districts. The board shall thereupon declare the result of the canvass. The candidates receiving a plurality of the votes cast respectively for the several offices shall be declared elected. The secretary or clerk of the board of education shall record the result of the election as announced by the board of education.

5. The secretary or clerk of the board of education shall within twenty-four hours after the result of the election has been declared serve a written notice either personally or by mail upon each person declared to be elected as a member of the board of education.

Education Law, § 217.

#### **Use of voting machines.**

In a city in which voting machines are used at general or municipal elections, it shall be lawful for the board of education of such city to authorize the use of such voting machines at a school election. When such voting machines are used the law relating to the use of such machines at a general or municipal election shall apply to and govern the use of such machines in a school election.

Education Law, § 218.

## CENTRAL HIGH SCHOOL DISTRICTS.

(Article 6-c [§§ 187-189-1], added by L. 1917, ch. 137, in effect Apr. 5, 1917.)

### Formation of central high school district.

Two or more adjoining school districts may be formed into a central high school district in the manner provided in this article, for the purpose of erecting, establishing and maintaining therein a high school for the secondary education of the pupils residing in such district who have completed the work of the elementary grades in the several school districts included in such central high school district.

Education Law, § 187.

### Request for meeting to vote on establishment of district; notice of meeting.

1. Whenever fifteen qualified electors of each of the districts proposing to establish such central high school district shall sign a request in writing for a meeting of the qualified electors of such districts, to be held for the purpose of determining whether a central high school district shall be established in conformity with the provisions of this article, it shall be the duty of the board of education of each union free school district and of the trustees of each common school district to give public notice that a meeting of the qualified electors of such districts will be held at a time and place to be specified therein. Such place shall be conveniently accessible to the qualified electors of such districts and the notice shall specify the day and hour of the meeting, which shall be not less than twenty nor more than thirty days after the publication of such notice. If the board of education and trustees of such districts refuse or fail to give such notice within twenty days after such request shall have been presented to them, the commissioner of education may by order authorize and direct an inhabitant of any of such districts to give such notice.

2. Such notice shall be published once a week for three consecutive weeks before the meeting in all the newspapers published in any of the districts proposed to be established as a central high school district. In addition to such publication, such notice shall be posted in five conspicuous places in each of such districts at least twenty days prior to the meeting. If there are no newspapers published in any of such districts, such notice shall be posted in at least ten conspicuous places in each of such districts at least twenty days prior to the day of the meeting.

Education Law, § 188.

### Expense of notice.

The reasonable expense of the publication and service of such notice, together with the expenses actually incurred in the holding of such meeting, shall be chargeable against the central high school district, if it be established, and shall be levied and collected by the board of education of such district, in the same manner as are other expenses chargeable against such district for the establishment and maintenance of a high school therein. In the event that such central high school district is not established, such expenses shall

be chargeable upon the qualified electors signing the request, jointly and severally, to be sued for if necessary in any court having jurisdiction of the same.

Education Law, § 189.

#### **Conduct of meeting.**

Such meeting shall be organized by the election of a chairman and a clerk, and may be adjourned from time to time by a majority vote, provided that such adjournment shall not be for a longer period than ten days. If there are at least fifteen qualified electors present from each of the districts proposing to establish such central high school district, such meeting may by the affirmative vote of a majority of those present and voting from each of such districts adopt a resolution to establish a central high school district comprising the districts voting in favor thereof. If when such resolution is presented a majority of the qualified electors present from one or more of such districts is opposed to the establishment of such central high school district, and a majority of the qualified electors present and voting from each of the other districts is in favor of such resolution, the qualified electors present and voting from the districts in favor of the establishment of such district may adopt a resolution for the establishment of a central high school district comprising the districts voting in favor of such resolution.

The resolutions so submitted shall be voted upon by taking and recording the ayes and noes. The clerk of the board shall keep a poll list containing the names of the qualified electors present from each of the districts and indicating how each of such electors voted upon such resolutions.

Education Law, § 189-a.

#### **Proceedings to be submitted to commissioner of education; order establishing district.**

A copy of the request of the qualified electors for the meeting to establish such central high school district, the notice of the meeting and the minutes of the proceedings thereof, including the resolutions adopted by the electors present thereat, shall be certified by the chairman and clerk of the meeting and shall be submitted to the commissioner of education. The commissioner shall, upon such notice and after such hearing as he may deem proper, consider the papers submitted to him in respect to the establishment of such district and ascertain as to the advisability of establishing such district. If he deems it for the educational interests of the districts affected that such central high school district shall be established, he shall issue an order under the seal of the department, directing that the said districts be established as a central high school district. The original order shall be filed in the office



of the commissioner, and copies thereof shall be filed in the offices of the district clerks of the districts comprising such central high school district, and also in the offices of the town clerks of the town in which such districts or any parts thereof are situated. Such district shall be established as a central high school district upon the execution of such order.

Education Law, § 189 b.

#### **Number and election of members of board of education.**

The order of the commissioner of education establishing such central high school district shall specify the number of members to constitute the board of education of such district and the number of members representing each of the districts included in such district. The number of such members shall be not less than five. There shall be at least one member of such board from each common school district and at least two from each union free school district. The board of education of each union free school district in such central high school district shall appoint the number of persons so designated by the commissioner to represent such district as members of the board of education thereof. In each common school district having a sole trustee, such trustee shall represent such district as a member of the board of education of such central high school district. If a common school district have three trustees, such board of trustees shall designate one of its members to represent such district as a member of such board of education. The persons so designated shall be members of the board of education of the central high school district during their terms of office as members of the board of education or as trustees of the districts respectively represented by them. Whenever a vacancy shall occur in the office of a member of the board of education of such central high school district, it shall be filled as above provided.

Education Law, § 189 c.

#### **District meetings; vote upon school taxes.**

The annual meeting of a central high school district shall be held on the first Tuesday in June. Special meetings may be called in the same manner and for the same purposes as special meetings in union free school districts. Such meetings shall be held for the same purposes and in the same manner, and be subject to the same provisions of law, as like meetings in union free school districts, and all persons who are qualified electors of the school districts included in such central high school district may vote at such meetings.

The board of education of such district shall present at the annual meeting a detailed statement in writing of the estimated expenditures required for the support and maintenance of the central high school therein for the ensuing year. The said meeting shall vote the necessary taxes to meet such expendi-

tures, in the same manner as taxes are voted at a district meeting in a union free school district. The provisions of sections three hundred and twenty-two to three hundred and twenty-six, inclusive, of this chapter, and all other provisions relative to the making of appropriations, the voting of taxes, and the expenditure of moneys for the support, maintenance and expenses of public schools in union free school districts, shall apply to the support, maintenance and expenses of a central high school in a central high school district established as provided in this chapter.

Education Law, § 189-b.

## DISTRICT SUPERINTENDENT OF SCHOOLS.

### **Office of district superintendent of schools created.**

The office of district superintendent of schools is hereby created to begin on the first day of January, nineteen hundred and twelve.

Education Law, § 380, as amended by L. 1910, chs. 140 and 607, in effect January 1, 1912.

### **Supervisory districts.**

1. The territory embraced in the school commissioner districts of the state outside of cities and of school districts of five thousand population or more, which employ a superintendent of schools, shall be organized and divided into supervisory districts. In the formation or division of such territory into such districts no town shall be divided. The territory of such districts must be contiguous and compact and towns shall be arranged in districts so that there shall be as equal a division of the territory and number of school districts as may be practicable.

2. In a county entitled to two or more supervisory districts the school commissioner of each school commissioner district in such county and the supervisor of each town in such county shall meet at the county seat of such county on the third Tuesday in April, nineteen hundred and eleven, at ten o'clock in the forenoon and divide such county into the number of supervisory districts to which it is entitled.

3. The county clerk of such county shall give ten days' notice, in writing, of such meeting, to each of such school commissioners and supervisors. The county clerk shall also call such meeting to order at the proper hour and the school commissioners and supervisors present shall elect from their number a chairman and a clerk.

4. A copy of the proceedings of such meeting showing the supervisory districts formed and naming the towns composing each of such districts, certified by the chairman and clerk, shall be deposited by the clerk of such meeting in the office of the clerk of the county immediately after the close of the meeting. The county clerk on receipt of the same shall forward a certified copy thereof to the commissioner of education.

5. The number of supervisory districts into which each county shall be organized or divided is as follows:

- a. Hamilton, Putnam, Rockland, Schenectady, each one;
- b. Chamung, Fulton, Genesee, Montgomery, Nassau, Schuyler, Seneca, Yates, each two;

c. Albany, Columbia, Cortland, Essex, Greene, Livingston, Niagara, Orange, Orleans, Rensselaer, Schoharie, Suffolk, Sullivan, Tioga, Tompkins, Warren, Wyoming, each three;

d. Broome, Clinton, Dutchess, Franklin, Herkimer, Lewis, Madison, Monroe, Ontario, Saratoga, Ulster, Washington, Wayne, Westchester, each four;

e. Allegany, Cattaraugus, Cayuga, Chenango, Erie, Onondaga, Oswego, each five;

f. Chautauqus, Delaware, Jefferson, Otsego, each six;

g. Oneida, Steuben, each seven;

h. Saint Lawrence, eight districts.

6. The district superintendents of two or more supervisory districts in a county may unite in a petition to the board of supervisors of the county for a change in the boundaries of such districts by including or excluding one or more towns, stating the reasons for such change, and if such change conforms to the territorial requirements of subdivision one of this section, the board of supervisors may, by resolution, change such districts in accordance with such petition. A copy of such resolution, certified by the chairman and clerk of the board of supervisors, shall be deposited by the clerk in the office of the clerk of the county. The county clerk on receipt of the same shall forward a certified copy thereof to the commissioner of education.

Education Law, § 381, as amended by L. 1910, chs. 140 and 607; L. 1916, ch. 238, L. 1919, ch. 300.

#### **School directors; terms of office; election; appointment.**

Each town included within a supervisory district shall have two school directors who shall serve for terms of four years each. The school directors who are in office when this act takes effect shall continue in office until their successors are chosen as provided by law. School directors shall be elected at the town meetings held in the years next succeeding the expiration of the terms of the school directors in office when this act takes effect and one director shall be elected at the town meeting held in every fourth year thereafter. Such directors and their successors in office shall serve for terms of four years each to commence on the first day of January following their election. Such directors shall be elected in the same manner that town officers are elected at town meetings held under the provisions of the town law, and the provisions of the election law relating to the nomination and election of such town officers shall apply to the nomination and election of such directors.

2. A school director shall vacate his office by removal from the town or by filing a written resignation with the town clerk. A vacancy in the office of school director shall be filled by the town board of the town in which such vacancy exists, for the remainder of the unexpired term. If the town fails to elect a director a vacancy shall be deemed to exist in such office.

3. A school director before entering upon the discharge of the duties of his office, and not later than thirty days after the date on which he was elected to office, shall take the oath of office prescribed by the constitution. Such oath may be taken before a justice of the peace or a notary public, and must be filed in the office of the clerk of the town.

4. A school director shall receive two dollars per day for each day's service and his necessary traveling expenses, and the town board of the town for which such director is chosen shall audit and allow the same.

Education Law, § 382, as amended by L. 1910, chs. 140 and 607; L. 1916, ch. 168; L. 1920, ch. 285.

#### **Election of district superintendent.**

1. The school directors of the several towns composing a supervisory district shall meet for organization at eleven o'clock in the forenoon on the third Tuesday in May following their election. Such meeting shall be held at a

place in the supervisory district, designated by the county clerk, at least ten days previous to the date thereof. At the time the county clerk designates such place of meeting he shall also mail a notice of the time and place of such meeting to each school director of the district. The school directors present at such meeting shall organize by electing from their number a chairman, a clerk and two inspectors of election. The school directors at such meeting shall designate a place for holding future meetings.

2. The school directors of the several towns composing a supervisory district shall be a board of school directors, and such board of directors shall meet at eleven o'clock in the forenoon on the third Tuesday in August, nineteen hundred and eleven, and on the third Tuesday in June every fifth year thereafter, and elect a district superintendent of schools. The clerk of such board shall give each director at least ten days' notice in writing of the hour, date and place of such meeting.

3. If such directors fail to elect a district superintendent of schools before the first day of January following the date of such meeting, and a vacancy exists in such office, the county judge shall appoint such superintendent who shall serve until the board of directors shall fill such vacancy.

4. In the election of such district superintendent the vote shall be by ballot and the person receiving a majority of all votes cast shall be elected. Each school director shall be entitled to one vote in such election.

5. The clerk of such board shall file a copy of the proceedings of each meeting and each election, certified by himself and the chairman, in the office of the clerk of the county in which such meeting or election is held within three days after the close thereof.

6. The county clerk on receipt of notice of the election of a district superintendent of schools in any supervisory district of his county shall deliver to the person elected a certificate of such election attested by his signature with the seal of the county and shall also transmit to the commissioner of education a duplicate of such certificate of election.

7. When a district superintendent enters the military or naval service of the United States during the continuance of the present war, the board of school directors of the supervisory district of such district superintendent shall designate a person to act as the deputy of such district superintendent. This deputy shall during the absence of said district superintendent perform all the duties and possess the power and authority conferred by law on a district superintendent. Such person shall also possess qualifications approved by the commissioner of education.

Education Law, § 383, as amended by L. 1910, chs. 140 and 607; L. 1918, ch. 107.

### **Qualifications of district superintendents.**

1. To be eligible to election to the office of district superintendent of schools a person must be at least twenty-one years of age, a citizen of the United States and a resident of the state, but he need not be a resident of the supervisory district for which he is elected at the time of his election. Such superintendent must, however, become a resident of the county containing the district for which he has been elected on or before the date on which his term of office begins. Failure to acquire such residence will be deemed a removal from the county. No person shall be ineligible on account of sex.

2. In addition thereto he must possess or be entitled to receive a certificate authorizing him to teach in any of the public schools of the state without further examination and he shall also pass an examination prescribed by the commissioner of education on the supervision of courses of study in agriculture and teaching the same.

3. A district superintendent who is removed from office shall not be eligible

to election to such office in any supervisory district for a period of five years.

Education Law, § 384, as amended by L. 1910, chs. 140 and 607, in effect July 1, 1910.

**District superintendent must take oath of office.**

A district superintendent of schools before entering upon the discharge of the duties of his office, and not later than five days after the date on which his term of office is to commence, shall take the oath of office prescribed by the constitution. Such oath may be taken before a county clerk, a justice of the peace, or a notary public and must be filed in the office of the clerk of the county.

Education Law, § 385, as amended by L. 1910, chs. 140 and 607, in effect July 1, 1910.

**Term of office of district superintendent.**

The district superintendents elected in nineteen hundred and eleven shall hold office until the first day of August, nineteen hundred and sixteen. The full term of office of a district superintendent of schools elected in nineteen hundred and sixteen and thereafter shall be five years and shall commence on the first day of August next after his election. A district superintendent of schools unless removed shall hold office until his successor is chosen and qualified.

Education Law, § 386, as amended by L. 1910, chs. 140 and 607, in effect July 1, 1910.

**Vacancies in the office of district superintendent.**

The office of district superintendent of schools shall be vacant upon:

1. The death of an incumbent.
2. His removal from office by the commissioner of education.
3. His removal from the county.
4. His filing in the office of the clerk of the county his written resignation.
5. His acceptance of the office of supervisor, town clerk or trustee of a school district.
6. His failure to take and file the oath of office as provided in this article.

Education Law, § 387, as amended by L. 1910, chs. 140 and 607, in effect July 1, 1910.

**Filling vacancy in the office of district superintendent.**

Whenever a vacancy occurs it shall be filled for the remainder of the unexpired term by the board of school directors. Upon direction of the commissioner of education the clerk of the board in which the supervisory district having such vacancy is located shall immediately call a special meeting of such board for the purpose of electing a district superintendent. The provisions



of this title relative to the election generally of a district superintendent of schools, including notices, filing of the proceedings and all other matters relating to such an election, shall apply to a special election to fill a vacancy in such office.

Education Law, § 388, as amended by L. 1910, chs. 140 and 607, in effect July 1, 1910.

**Removal of district superintendent from office.**

The commissioner of education may, by an order under the seal of the education department, remove a district superintendent of schools from office whenever he is satisfied that such superintendent:

1. Has been guilty of immoral conduct,
2. Is incompetent to perform any official duty; or
3. Has persistently neglected or willfully refused to perform any lawful duty imposed upon him.

Education Law, § 392, as amended by chs. 140 and 607, in effect July 1, 1910.

**PART 11.**

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**GENERAL CONSTRUCTION LAW**

**AND**

**ACT TO PRESCRIBE RULES FOR CONSTRUCTION OF CONSOLIDATED LAWS.**



# GENERAL CONSTRUCTION LAW

(L. 1909, ch. 27.)

- Article 1.** Short title (§ 1).  
2. Meaning of terms (§§ 10-58).  
3. Ancient statutes and resolutions (§§ 70-72).  
4. References, titles and head notes (§§ 80, 81).  
5. Effect of repeals (§§ 90-96).  
6. Effect of consolidated laws (§§ 100, 101).  
7. Application of chapter (§ 110).  
8. Laws repealed; when to take effect (§§ 120, 121).

## ARTICLE 1.

### Short Title.

**Section 1.** Short title.

#### § 1. Short title.

This chapter shall be known as the "General Construction Law."

## ARTICLE 2.

### Meaning of Terms.

- Section 10.** Acknowledge and acknowledgment.  
11. Acknowledgment or proof of instrument.  
12. Affidavit.  
13. Adjournment of meeting.  
14. Bond and undertaking.  
15. Chattel.  
16. Choose.  
17. Civil code and criminal code.  
18. Consolidated laws.  
19. Day, calendar.  
20. Day, computation.  
21. The term folio shall mean one hundred words, counting each figure as a word.  
22. Gender.  
23. Heretofore and hereafter.  
24. Holiday and half holiday.  
25. Holiday in contractual obligations.  
26. Judge.  
27. Last, preceding, next and following.  
28. Lunatic and lunacy.  
29. Men.  
30. Month, computation.  
31. Month in statute, contract and public or private instrument.  
32. Municipal officers.  
33. Notice.  
34. Now.  
35. Number, singular and plural.  
36. Oath, affidavit and swear.

- 37 Person.
- 38 Property.
- 39 Property, personal.
- 40 Property, real.
- 41 Quorum and majority.
- 42 Register of county.
- 43 Seal of court, public officer or corporation.
- 44 Seal, private.
- 45 Seal, private as corporate seal.
- 46 Signature.
- 47 State.
- 48 Tense, present.
- 49 Territory.
- 50 Time, computation.
- 51 Time, night.
- 52 Time, standard.
- 53 Time, use of standard.
- 54 Village.
- 55 Women.
- 56 Writing and written.
- 57 Year, common and leap.
- 58 Year in statute, contract and public or private instrument.

### § 10. Acknowledge and acknowledgment.

The terms acknowledge and acknowledgment, when used with reference to the execution of an instrument or writing other than a deed of real property, include a compliance with the provisions of the next section by either such proof or acknowledgment.

### § 11. Acknowledgment or proof of instrument.

When the execution of any instrument or writing is authorized or required by law to be acknowledged, or to be proven so as to entitle it to be filed or recorded in a public office, the acknowledgment may be taken or the proof made before any officer then and there authorized to take the acknowledgment or proof of the execution of a deed of real property to entitle it to be recorded in a county clerk's office, and shall be made and certified in the same manner as such acknowledgment or proof of such deed.

### § 12. Affidavit.

When an affidavit is authorized or required it may be sworn to before any officer authorized by law to take the acknowledgment of deeds in this state, unless a particular officer is specified before whom it is to be taken.

### § 13. Adjournment of meeting.

Any meeting referred to in section forty-one of this chapter may be adjourned by a less number than a quorum.

### § 14. Bond and undertaking.

A provision of law authorizing or requiring a bond to be given shall be deemed to have been complied with by the execution of an undertaking to the same effect.

### § 15. Chattels.

The term chattels includes goods and chattels.

### § 16. Choses.

The term choses includes elect and appoint.

### § 17. Civil code and criminal code.

The term civil code means the code of civil procedure. The term criminal code means the code of criminal procedure.

**§ 18. Consolidated Laws.**

The term Consolidated Laws shall mean the compilation of the statutes prepared by the board of statutory consolidation and the amendments thereof.

**§ 19. Day, calendar.**

A calendar day includes the time from midnight to midnight. Sunday or any day of the week specifically mentioned means a calendar day.

**§ 20. Day, computation.**

A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. Sunday or a public holiday, other than a half holiday, must be excluded from the reckoning if it is the last day of any such period, or if it is an intervening day of any such period of two days. In computing any specified period of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified period of time is reckoned shall be excluded in making the reckoning.

(Amended by L. 1910, ch. 347, in effect May 21, 1910.)

**§ 21. The term folio shall mean one hundred words, counting each figure as a word.**

When an officer empowered by law to do so shall order an official advertisement published in a newspaper in display type or to be so displayed as to leave an unusual quantity of blank space in the advertisement, or to contain pictures or diagrams, or where the character of such advertisement requires it, such advertisement shall be paid for by measurement over all of such space necessarily used, two square inches of space to count as one folio. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice or order contains less than fifty words.

Amended by L. 1914, ch. 72, in effect March 24, 1914.

**§ 22. Gender.**

Words of the masculine gender include the feminine and the neuter, and may refer to a corporation, or to a board or other body or assemblage of persons; and, when the sense so indicates, words of the neuter gender may refer to any gender.

**§ 23. Heretofore and hereafter.**

Each of the terms, heretofore, and hereafter, in any provision of a statute, relates to the time such provision takes effect.

**§ 24. Holiday and half holiday.**

The term holiday includes the following days in each year: The first day of January, known as New York's day; the twelfth of February, known as Lincoln's birthday; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as Memorial day; the fourth day of July, known as Independence day; the first Monday of September, known as Labor day; the twelfth day of October, known as Columbus day; and the twenty-fifth day of December, known as Christmas day, and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States or by the governor of this state as a day of general thanksgiving, general fasting and prayer, or other general religious observances. The term half holiday includes the period from noon to midnight of each Saturday which is not a holiday.

Amended by L. 1909, ch. 112.

**§ 25. Holiday in contractual obligations.**

Where a contract by its terms requires the payment of money or the performance of a condition on a public holiday, such payment may be made or condition performed on the next business day succeeding such holiday, with the same force and effect as if made or performed in accordance with the terms of the contract.

**§ 26. Judge.**

The term judge includes every judicial officer authorized, alone or with others, to hold or preside over a court of record.



**§ 27. Last, preceding, next and following.**

A reference to the last or preceding section, or other provision of a statute, means the section or other division immediately preceding, and a reference to the next or following section or other division of a statute means the section or other division immediately following.

**§ 28. Lunatic and lunacy.**

The terms lunatic and lunacy include every kind of unsoundness of mind except idiocy.

**§ 29. Men.**

The term men includes boys.

**§ 30. Month, computation.**

A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

**§ 31. Month in statute, contract and public or private instrument.**

In a statute, contract or public or private instrument, unless otherwise provided in such contract or instrument or by law, the term month means a calendar month and not a lunar month.

**§ 32. Municipal officers.**

A reference to several officers of a municipal corporation holding the same office, or to a board of such officers, shall be deemed to refer to the single officer holding such office, when but one person is chosen to fill such office in pursuance of law.

**§ 33. Notice.**

When a notice is required to be given to a board or body, service of such notice upon the clerk or chairman thereof shall be sufficient.

**§ 34. Now.**

The term now in any provision of a statute referring to other laws in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or to the person in office, or to the facts or circumstances existing, respectively, immediately before the taking effect of such provision.

**§ 35. Number, singular and plural.**

Words in the singular number include the plural, and in the plural number include the singular.

**§ 36. Oath, affidavit and swear.**

The terms oath and affidavit include every mode authorized by law of attesting the truth of that which is stated. The term swear includes every mode authorized by law for administering an oath.

**§ 37. Person.**

The term person includes a corporation and a joint-stock association. When used to designate a party whose property may be the subject of any offense, the term person also includes the state, or any other state, government or country which may lawfully own property in the state.

**§ 38. Property.**

The term property includes real and personal property.

**§ 39. Property, personal.**

The term personal property includes chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property, or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership.

Oil wells and all fixtures connected therewith, situate on lands leased for oil purposes and oil interests, and rights held under and by virtue of any lease or contract or other right or license to operate for or produce petroleum oil, shall be deemed personal property for all purposes except taxation.

**§ 40. Property, real.**

The term real property includes real estate, lands, tenements and hereditaments, corporeal and incorporeal.

**§ 41. Quorum and majority.**

Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of all such persons or officers at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, may perform and exercise such power, authority or duty, and if one or more of such persons or officers shall have died or have become mentally incapable of acting, or shall refuse or neglect to attend any such meeting, a majority of the whole number of such persons or officers shall be a quorum of such board or body, and a majority of a quorum, if not less than a majority of the whole number of such persons or officers may perform and exercise any such power, authority or duty.

**§ 42. Register of county.**

Any act done in pursuance of law by the register of a county shall be deemed to be a compliance with any provision of law authorizing or requiring such act to be done by the county clerk of such county, and any instrument or writing filed, entered or recorded in pursuance of law in the office of a register of a county, shall be deemed to be a compliance with any provision of law authorizing or requiring such paper to be filed, entered or recorded, as the case may be, in the office of the clerk of such county. The term county clerk when used in relation to conveyances of real property or the filing or recording of instruments which are or may be filed in the office of the register of a county, shall include the register of each county in which there is a register.

**§ 43. Seal of court, public officer or corporation.**

A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper, or other similar substance affixed thereto by mucilage or other adhesive substance.

**§ 44. Seal, private.**

The private seal of a person, other than a corporation, to any instrument or writing shall consist of a wafer, wax or other similar adhesive substance affixed thereto, or of paper or other similar substance affixed thereto, by mucilage or other adhesive substance, or of the word "seal," or the letters "L. S.," opposite the signature.

**§ 45. Seal, private as corporate seal.**

An instrument or writing duly executed, in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under their private seals, shall be deemed to have been executed under the corporate seal.

**§ 46. Signature.**

The term signature includes any memorandum, mark or sign, written or placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

**§ 47. State.**

The term state, when used generally to include every state of the United States, includes also every territory of the United States and the District of Columbia.

**§ 48. Tense, present.**

Words in the present tense include the future.

**§ 49. Territory.**

The term territory when used generally to include every territory of the United States, includes also the District of Columbia.

**§ 50. Time, computation.**

Time shall continue to be computed in this state according to the Gregorian or new style. The first day of each year after the year seventeen hundred and fifty-two is the first day of January, according to such style.

**§ 51. Time, night.**

Night time includes the time from sunset to sunrise.

**§ 52. Time, standard.**

The standard time throughout this state is that of the seventy-fifth meridian of longitude west from Greenwich, and all courts and public officers, and legal and judicial proceedings, shall be regulated thereby.

Amended by L. 1918, ch. 113; L. 1921, ch. 70.

**§ 53. Time, use of standard.**

Any act required by or in pursuance of law to be performed at or within a prescribed time, shall be performed according to the standard time.

**§ 54. Village.**

The term village means an incorporated village.

**§ 55. Women.**

The term women includes girls.

**§ 56. Writing and written.**

The terms writing and written include every legible representation of letters upon a material substance, except when applied to the signature of an instrument.

**§ 57. Year, common and leap.**

For the purpose of computing and reckoning the days of the year in the same regular course in the future, every year, the number of which in the Christian era is a multiple of four, is a bissextile or leap year consisting of three hundred and sixty six days, unless such number of the year is a multiple of one hundred and the first two figures thereof treated as a separate number is not a multiple of four, and every year which is not a leap year is a common year consisting of three hundred and sixty five days.

**§ 58. Year in statute, contract and public or private instrument.**

The term year in a statute, contract, or any public or private instrument, means three hundred and sixty five days; but the added day of a leap year and the day immediately preceding shall for the purpose of such computation be counted as one day. In a statute, contract or public or private instrument, the term year means twelve months, the term half year, six months, and the term a quarter of a year, three months.

ARTICLE 3.

Ancient Statutes and Resolutions.

Section 70. Statutes of England and Great Britain inoperative in this state.

71. Acts of the legislature of the colony of New York inoperative.

72. Resolutions of the congress of the colony and the convention of New York inoperative.

§ 70. Statutes of England and Great Britain inoperative in this state.

A statute of England or Great Britain shall not be deemed to have had any force or effect in this state since May first, seventeen hundred and eighty-eight.

§ 71. Acts of the legislature of the colony of New York inoperative.

Acts of the legislature of the colony of New York shall not be deemed to have had any force or effect in this state since December twenty-ninth, eighteen hundred and twenty-eight.

§ 72. Resolutions of the congress of the colony and the convention of New York inoperative.

The resolutions of the congress of the colony of New York and of the convention of the state of New York, shall not be deemed to be the laws of this state hereafter.

ARTICLE 4.

References, Titles and Head Notes.

Section 80. References to repealed provisions.

81. Titles and head notes.

§ 80. References to repealed provisions.

If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision.

§ 81. Titles and head notes.

If the title of any article or other division of a statute, or the head note of a section shall be amended or repealed in the body of the statute, or if a new article or other division having a title, or a new section having a new head note be added to a statute, the corresponding title or head note, if any, in an abstract of contents at the beginning of the article or other division of the statute shall be deemed to be correspondingly amended or repealed, although there be no express reference thereto.

ARTICLE 5.

Effect of Repeals.

Section 90. Effect of the repeal of a repealing statute.

91. Effect of the repeal of a statute upon amendments thereof.

92. Effect of the repeal of an amending statute.

93. Effect of repealing statute upon existing rights.

94. Effect of repealing statute upon pending actions and proceedings.

95. Effect of the repeal of a statute by another statute substantially re-enacting the former.

96. Effect of hyphen in schedule of repeals.

§ 90. Effect of the repeal of a repealing statute.

The repeal hereafter or by this chapter of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision.



**§ 91. Effect of the repeal of a statute upon amendments thereof.**

The repeal by the Consolidated Laws of a statute includes a statute amendatory of the statute repealed.

**§ 92. Effect of the repeal of an amending statute.**

The repeal hereafter or by this chapter of any provision of a statute, which amends a provision of a prior statute, leaves such prior provision in force unless the amendatory statute be a substantial re-enactment of the statute amended.

**§ 93. Effect of repealing statute upon existing rights.**

The repeal of a statute or part thereof shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

**§ 94. Effect of repealing statute upon pending actions and proceedings.**

Unless otherwise specially provided by law, all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the taking effect of such repeal may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

**§ 95. Effect of the repeal of a statute by another statute substantially re-enacting the former.**

The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall be construed as a continuation of such provisions of such prior law, modified or amended according to the language employed, and not as new enactments.

**§ 96. Effect of hyphen in schedule of repeals.**

When two numbers in a schedule of repeals of the consolidated laws are connected by a hyphen both such numbers are included as well as all intermediate numbers.

**ARTICLE 6.****Effect of Consolidated Laws.**

**Section 100.** Effect of consolidation upon laws passed at same session or before consolidation takes effect.

**101.** Effect of consolidated laws on penal law and civil and criminal codes

**§ 100. Effect of consolidation upon laws passed at same session or before consolidation takes effect.**

No provision of any chapter of the consolidation of the general laws, of which this chapter is a part, shall supersede or repeal by implication any law passed at the same session of the legislature at which any such chapter was enacted, or passed after the enactment of any such chapter and before it shall have taken effect, and an amendatory law passed at such session or at any subsequent session begun before any such chapter takes effect, shall not be deemed repealed, unless specifically designated in the repealing schedule of such chapter.

**§ 101. Effect of consolidated laws on penal law and civil and criminal codes.**

The Consolidated Laws shall not be construed to amend, repeal or otherwise affect any provision of the penal law, code of civil procedure or code of criminal procedure unless expressly so stated.

**ARTICLE 7.****Application of Chapter.**

**Section 110.** Application of chapter.

**§ 110. Application of chapter.**

This chapter is applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by this chapter.

**ARTICLE 8.****Laws Repealed; When to Take Effect.**

**Section 120.** Laws repealed.

121. When to take effect.

**§ 120. Laws repealed.**

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 121. When to take effect.**

This chapter shall take effect immediately.



# AN ACT TO PRESCRIBE THE RULES FOR THE CONSTRUCTION OF THE CONSOLIDATED LAWS AND CODE AMENDMENTS.

(L. 1908, ch. 598.)

SECTION 1. In construing the consolidated laws and the amendments to the code of civil procedure and the code of criminal procedure reported to the legislature by the board of statutory consolidation constituted under the provisions of chapter six hundred and sixty-four, of the laws of nineteen hundred and four, entitled "An act to provide for the consolidation of the statutes of the state," and enacted by the legislature of nineteen hundred and nine and in construing the act amendatory thereof, known as chapter two hundred and forty of the laws of nineteen hundred and nine, for the purpose of determining the effect of any of the provisions or sections thereof or any other provision or section thereof, or on any special laws theretofore enacted, the several provisions and sections of such law and code amendments and said act amendatory thereof shall not be considered as having been enacted or re-enacted by the legislature at the time of the passage of the consolidated laws or such code amendments or said act amendatory thereof but as having been enacted as of the various times when such provisions and sections first became laws by any earlier statutes, provided, however, that when any provision of law after its first enactment by the legislature has been amended or re-enacted then for the purpose of its construction for the determination of its effect on other sections or provisions of the consolidated laws, it shall be considered as having been enacted at the date of such amendment or re-enactment. If in any such consolidated law and such amendments to the code of civil procedure and the code of criminal procedure as enacted by the legislature of nineteen hundred and nine of said act amendatory thereof there shall have been incorporated any provisions of the law that have heretofore been superseded or impliedly repealed, the incorporation of any such provisions shall not be construed as a legislative intent to revive such superseded or repealed provisions, nor shall such incorporation in such consolidated laws be construed to indicate any legislative determination that such provisions had not been heretofore so superseded or repealed. The true purpose and intent of this act is to prescribe that the statute law of the state, so far as it has been reproduced in such consolidated laws and in such amendments to the code of civil procedure and the code of criminal procedure, and in said chapter two hundred and forty of the laws of nineteen hundred and nine, and all special laws in force at the time of the enactment of such consolidated laws, shall be of the same force and effect as they were before the enactment of such consolidated laws or code amendments or said act amendatory thereof.

**PART 12.**

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**ELECTION LAW FORMS.**

## NOTE

Inasmuch as the Board of Statutory Consolidation in the preparation of the Election Law has followed as far as possible the chronological order of the election process, beginning with the primaries and enrollment in parties, continuing through registration for elections, the proceedings in preparation for and upon Election Day, the proceedings of the Boards of Canvassers, etc., it has been deemed advantageous to arrange these forms likewise as far as possible in the chronological order. They have been arranged in the numerical order of the sections of the Election Law to which they are applicable.

## LIST OF ELECTION LAW FORMS.

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1. Form for enrollment blanks. (Elec. Law, § 7.)
2. Certification of registers, with respect to enrollment occurring on a day of registration. (Elec. Law, § 12.)
3. Certification of registers, with respect to enrollment occurring on the day of general election. (Elec. Law, § 13.)
4. Certification of enrollment by custodian of primary records. (Elec. Law, § 14.)
5. Special enrollment upon becoming of age. (Elec. Law, § 14b.)
6. Transcript of enrollment list. (Elec. Law, § 14a.)
7. Affidavit for correction of enrollment list. (Elec. Law, § 14a.)
8. Statement for special enrollment of soldier, sailor, or marine and certain other persons. (Elec. Law, § 15a.)
9. Certification of enrollment registers. (Elec. Law, § 16.)
10. Form of enrollment lists for changed districts. (Elec. Law, § 20.)
11. Certificate of transcripts of enrollment. (Elec. Law, § 21.)
12. Certificate of names and addresses of officers of party committees. (Elec. Law, § 40.)
14. Certification of rules and regulations. (Elec. Law, § 40.)
17. Petition for designation of candidates for party nomination or for election to party position. (Elec. Law, § 48.)
18. Declination by person designated. (Elec. Law, § 50.)
19. Certificate of nomination, to fill vacancy, by duly authorized committee. (Elec. Law, § 52.)
20. Certificate of Board of Elections where posters are provided for primary elections. (Elec. Law, § 52.)
21. Official primary ballot. (Elec. Law, § 58.)
22. Oath of primary election officers. (Elec. Law, § 70.)
23. Preliminary oath by challenged voter at primary election. (Elec. Law, § 72.)
24. Certificate of chairman of general committee as to coming primary elections, etc. (Elec. Law, § 75.)
25. Notice of official primary. (Elec. Law, § 75.)
26. For appointments to fill vacancies in board of primary election officers. (Elec. Law, § 77.)
27. Primary election poll book. (Elec. Law, § 78.)
28. Primary election tally sheet blanks. (Elec. Law, § 79.)
29. Ballot return sheet. (Elec. Law, §§ 85 and 87.)
30. Primary inspectors' return and statement of result. (Elec. Law, §§ 79, 85 and 87.)
31. Certificate of nomination to public office or of election to party position. (Elec. Law, § 89.)
32. Certificate of nomination to fill vacancy in a nomination for public office made at a primary election. (Elec. Law, § 90.)

33. Certificate of nomination for town, village and certain other offices. (Elec. Law, § 121.)
35. Independent certificate of nomination. (Elec. Law, §§ 122, 123.)
36. List of nominations to be published by board of elections. (Elec. Law, § 130.)
37. Printed list to be sent by board of elections to each town clerk or alderman in county or city. (Elec. Law, § 131.)
38. List of nominations to be posted by town or village clerk at other than time of general election. (Elec. Law, § 132.)
39. Declination of nomination by person nominated otherwise than by official primary election. (Elec. Law, § 133.)
40. Filling vacancies in nominations by duly authorized committees where vacancy occurs in nomination made otherwise than by official primary election. (Elec. Law, §§ 135, 136.)
41. Certificate of board of elections where death of candidate after printing of ballots requires use of proctors. (Elec. Law, § 137.)
42. Form of register outside of city of over one million inhabitants. (Elec. Law, § 155.)
- 42a. Form of register in city of over one million inhabitants. (Elec. Law, § 156.)
43. Form of registry lists. (Elec. Law, § 157.)
44. Affidavit as to residence. (Elec. Law, § 163.)
45. Oath to be administered to illiterate or disabled voters. (Elec. Law, § 164.)
46. Challenge affidavits. (Elec. Law, § 168.)
47. Oath to be administered to applicant for registration who has been challenged. (Elec. Law, § 169.)
- 47a. Duplicate book of challenge affidavits. (Elec. Law, § 171.)
48. Oath for record of challenge. (Elec. Law, § 173.)
49. Certification of register at close of each meeting for registration in a city or district wholly within a village of 5,000 or more. (Elec. Law, § 176.)
50. Certification of register at close of each meeting for registration, elsewhere than in a city or district wholly within a village of 5,000 or more. (Elec. Law, § 176.)
51. Certificate of total number of registered voters. (Elec. Law, § 181.)
52. Certificate of number of voters registered at close of each registration day. (Elec. Law, § 181.)
53. Recommendation for appointment of commissioners of election. (Elec. Law, § 194.)
54. Oath of office for election officers. (Elec. Law, § 307.)
55. Certificate by chairman of board of inspectors showing number of days of service of each member of board, etc. (Elec. Law, § 308.)
56. Appointment of clerks in towns. (Elec. Law, § 312.)
57. Appointment by inspector of voter to act as member of board of inspectors in case of vacancy or absence of an inspector at any meeting of inspectors. (Elec. Law, § 313, ¶ 1.)
58. Appointment by pol. clerk, ballot clerk or general clerk of voters to act as members of board of inspectors where two inspectors of same party are absent on election day. (Elec. Law, § 313, ¶ 2.)
59. Appointment by inspector or inspectors present, of voters to act as members of board of inspectors where two inspectors of same party are absent on any registration day. (Elec. Law, § 313, ¶ 3.)
60. Designations, by voters present, to fill vacancies in board of inspectors where offices of all inspectors are vacant or no inspector appears within one hour. (Elec. Law, § 313, ¶ 4.)

61. Appointment of poll clerk, ballot clerk or general clerk in case of vacancy or absence from meetings of inspectors. (Elec. Law, § 313, ¶ 5.)
62. Precept in case of refusal to obey the lawful commands of the inspectors. (Elec. Law, § 315.)
63. Precept in case of disorderly conduct in presence or hearing of inspectors. (Elec. Law, § 315.)
64. Bill for compensation in towns. (Elec. Law, § 319.)
65. General ballot. (Elec. Law, § 331.)
66. Ballot for questions submitted. (Elec. Law, § 332.)
67. Sample ballot. (Elec. Law, § 333.)
68. Instruction card to be printed in English and in each of such other languages as the officer or officers charged with providing them shall deem necessary, to be provided for each polling place on election day. (Elec. Law, § 333.)
69. Ballot clerk's return. (Elec. Law, § 335.)
70. Return and tally of votes cast for presidential electors. (Elec. Law, § 337.)
71. Return and tally of votes for officers other than presidential electors. (Elec. Law, § 338.)
72. Return and tally of votes upon questions submitted. (Elec. Law, § 339.)
73. Ballots in towns in which town meetings are held at the time of general elections. (Elec. Law, § 341.)
74. Election inspectors' receipt for official ballots, etc., received from town or city clerk. (Elec. Law, § 343.)
75. Unofficial ballots. (Elec. Law, § 345.)
76. Proclamation of opening of polls. (Elec. Law, § 350.)
77. Certificate of appointment of watchers. (Elec. Law, § 352.)
78. Poll book for keeping the list of voters voting or offering to vote at elections. (Elec. Law, § 355.)
79. Oath of illiterate or disabled voter. (Elec. Law, §§ 357, 357a.)
80. Oath to be taken by election officers before opening of polls on election day. (Elec. Law, § 357.)
81. Preliminary oath on challenge in relation to right to vote at elections. (Elec. Law, § 362.)
82. Questions to be put to challenged voters by inspectors after administering preliminary oaths. (Elec. Law, § 362.)
83. General oath and additional oaths to be administered by one of the inspectors to a person persisting in his claim to vote when challenge is not withdrawn. (Elec. Law, § 363.)
84. Record of persons challenged. (Elec. Law, § 364.)
85. Statement of return of canvass. (Elec. Law, § 373.)
86. Proclamation of result of election. (Elec. Law, § 375.)
- 86a. Form of ballots for voting machines. (Elec. Law, § 397.)
87. Statements of canvass by county boards of canvassers. (Elec. Law, § 437.)
88. Reports by lodging-house and hotel keepers. (Elec. Law, § 480.)



## FORM No. 1

(Election Law, § 7.)

For form for enrollment blanks, see Election Law, § 7.

## FORM No. 2

(Election Law, § 12.)

## Certification of Registers with Respect to Enrollment Occurring on a Day of registration.

We, the undersigned inspectors of election of the ..... election district of the ..... ward (or assembly district) of the city (or village) of ..... do hereby severally certify, and declare, pursuant to the provisions of the Election Law, § 12, that the persons shown in the within (or attached) original enrollment registers are the only persons who registered personally this year as voters in the above-mentioned district on any of the days of registration, viz., ..... and .....

And we do further certify and declare that the number of the last enrollment blank used on the last day of registration was No. ....

Dated....., N. Y., ..... 19...

.....  
 .....  
 .....  
 .....

(Inspectors.)

## STATE OF NEW YORK, )

COUNTY OF ..... ) ss.:  
 or ..... )

(Insert names of inspectors) being severally duly sworn, depose and say and each for himself says, that he is a regularly constituted inspector of elections in the district mentioned in the foregoing declaration, that he has read and subscribed the said declaration and that the same is true to the knowledge of deponent.

.....  
 .....  
 .....  
 .....

(Inspectors.)

Severally subscribed and sworn to before me, }  
 this....day of....., 19... }

(Officer taking verification.)

N. B. — To be severally subscribed and verified by the board of inspectors in duplicate, one of which shall be printed in or attached to each of the original enrollment books.

## FORM No. 3.

(Election Law, § 13.)

**Certification of Registers with Respect to Enrollment Occurring on the Day of General Election.**

We, the undersigned inspectors of election of the ..... election district of the ..... ward (or assembly district) of the city (or village) of ....., do hereby severally certify, and declare, pursuant to the provisions of the Election Law, § 13, that the last enrollment number used on the ..... day of ....., 19..., which was the last preceding day of registration, was No. ...., and that the persons shown by the within enrollment registers, whose enrollment number is higher than said last number used on said last preceding day of registration, are the only persons who voted in the above-mentioned district at the general election held this day (or on the .... day of ....., 19...) who were not registered personally.

Dated....., N. Y., ....., 19...

.....  
 .....  
 .....  
 .....

*Inspectors.*

STATE OF NEW YORK,)

COUNTY OF ....., } ss.:  
..... OF .....

(Insert names of inspectors) being severally duly sworn, depose and say and each for himself says, that he is a regularly constituted inspector of elections in the district mentioned in the foregoing declaration; that he has read and subscribed the said declaration and that the same is true to the knowledge of deponent.

.....  
 .....  
 .....  
 .....

(Inspectors.)

Severally subscribed and sworn to before me, }  
 this....day of....., 19...

(Officer taking verification.)

N. B.—To be severally subscribed and verified by the board of election inspectors in duplicate, one of which shall be printed in or attached to each of the enrollment books.

## FORM No. 4.

(Election Law, § 14.)

**Certification of Enrollment by Custodian of Primary Records.**

We, ..... and ....., the members of the Board of Elections of the county (or city) of ....., the custodians of primary records of such county (or city), do hereby certify and declare that we have correctly and properly transcribed to the within (or attached) original enrollment

books all of the enrollments from all of the enrollment blanks delivered to us pursuant to § 14 of the Election Law and we have correctly and properly transcribed the enrollment indicated on the blank of each voter to the said enrollment books, as provided in said section of the Election Law.

Dated . . . , N. Y., . . . , 19 . . . . .

.....  
Custodians of Primary Records.

# STATE OF NEW YORK,)

COUNTY OF . . . , ss.:

. . . OF . . . )  
and . . . , being duly sworn, depose and say, and each for himself says that he is one of the custodians of primary records in said county (or city) of . . . ; that he has read and subscribed the foregoing declaration and that the same is true to the knowledge of deponent.

.....  
(Custodians of Primary Records.)

Subscribed and sworn to before me, }  
this . . . day of . . . , 19 . . . }

(Officer taking verification.)

N. B. — To be subscribed and verified in duplicate, one of which shall be printed in or attached to each of the original enrollment books.

## FORM No. 5.

For form of special enrollment upon becoming of age, see Election Law, § 11b.

## FORM No. 6.

(Election Law, § 14a.)

### Transcript of Enrollment List.

We, the undersigned, the members of the Board of Elections of the county (or city) of . . . and the custodians of primary records of such county (or city), do hereby certify and declare that we have examined the enrollment lists in our office for the preceding five years and that the following is a true and correct transcript of so much of said enrollment lists for the year . . . as relates to the enrollment of one . . . whose residence is given as . . .

And we do further certify that the following is a true and correct transcript of so much of said enrollment lists for the year . . . as relates to the enrollment of one . . . whose residence is given as . . .

(Repeat transcript for as many years as required.)

Dated . . . , N. Y., . . . , 19 . . . . .

.....  
Custodians of Primary Records

N. B. — For form of certificate of enrollment or of transfer, see also Forms Nos. 10 and 11.

## FORM No. 7.

(Election Law, § 14a.)

**Affidavit for Correction of Enrollment List.**

May be filed with Board of Elections at any time after completion of Enrollment books in any year, and prior to the ensuing first day of July.

I, ....., do solemnly declare that I reside at No. ...., in the City or Town of ....., and am a duly qualified voter of the..... Election District of the..... Ward or Town in the said City or Town of.....; that at one of the last preceding days for the enrollment of party voters in such election district I received an enrollment blank and made my mark in a circle under one of the party emblems thereon, but such marking was done inadvertently and indicated my enrollment with a party with which I was not then affiliated and with which I did not intend to enroll; and I therefore request that I be especially enrolled with the..... Party.

I am in general sympathy with the principles of the..... Party. It is my intention to support generally at the next general election the nominees of such party. I have been duly and regularly enrolled with such party for at least five (5) years prior to the enrollment at which such mistake occurred. I have not participated in any primary election or convention of any other party during such period of five years.

Dated, ....., 191...

STATE OF NEW YORK, )

CITY OF..... ) ss.:

COUNTY OF..... )

On this.... day of ....., 191..., before me personally came....., to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF NEW YORK, )

CITY OF..... ) ss.:

COUNTY OF..... )

....., being duly sworn deposes and says that he resides at ..... in the City or Town of....., and has been a qualified elector in the..... Ward or Town of the City or Town of ..... for the past..... years and that during all such years deponent has been affiliated with and an enrolled member of the..... Party and has voted the..... ticket. That the enrollment books on file with the custodians of primary records show deponent enrolled with the..... Party only for the years of 1908, 1909 and 1910, the enrollment books for the preceding years of 1906 and 1907 having been destroyed and that deponent is unable to procure transcripts of certificates of his enrollment for such years. That annexed hereto and made a part of this application are the affidavits of..... and..... showing that deponent has participated in the..... primaries of the..... Election District of the..... Ward or Town in the said City or Town of..... in the years 1906 and 1907.

Therefore, your deponent prays that the custodians of primary records change deponent's enrollment from the..... Party to the..... Party and so enter it upon the original enrollment books

# ELECTION LAW FORMS.

as provided by Chapter 53 of the Laws of 1913, in order that the deponent may participate in the primary held on....., 191..

Sworn to before me this..... }  
day of ..... , 191.. }

STATE OF NEW YORK, }  
CITY OF ..... } ss.:  
COUNTY OF .....

....., being duly sworn, deposes and says that he resides at No..... in the City or Town of....., that he knows ..... of No..... in the City or Town of..... and has known him for..... years last past That deponent to his own knowledge has seen said..... participating in the..... primaries of..... Election District of the..... Ward or Town of the City or Town of..... by voting thereat on the official primary day in the years 1906 and 1907 and that said..... has been to the knowledge of deponent an enrolled member of the..... Party for more than five years preceding the enrollment of the fall of 191...

Sworn to before me this..... }  
day of ..... , 191.. }

STATE OF NEW YORK, }  
CITY OF ..... } ss.:  
COUNTY OF .....

....., being duly sworn, deposes and says that he resides at No..... in the City or Town of....., that he knows ..... of No..... in the City or Town of..... and has known him for..... years last past That deponent to his own knowledge has seen said..... participating the..... primaries of..... Election District of the..... Ward or Town of the City or Town of..... by voting thereat on the official primary day in the years 1906 and 1907 and that said..... has been to the knowledge of deponent an enrolled member of the..... Party for more than five years preceding the enrollment of the fall of 191...

Sworn to before me this..... }  
day of ..... , 191.. }

## FORM No. 2.

(Election Law, § 15a.)

For form of statement for special enrollment of soldiers, sailors, marines, and certain other persons, see Election Law, § 15a

## FORM No. 9.

(Election Law, § 16.)

## Certification of Enrollment Registers.

We, the undersigned, the members of the board of elections of the county (or city) of ..... and the custodians of primary records of such county (or city), do hereby certify and declare that the foregoing is a correct transcript of the names, addresses and political affiliation of each voter enrolled in the county (or city) of ..... taken from the original enrollment registers filed in our office, and being the enrollment registers made during the days of registration of voters for or at the general election held in said county (or city) on the ..... day of ....., 19..:

Dated ....., N. Y., ....., 19...

.....  
 .....  
 Custodians of Primary Records.

## FORM No. 10.

(Election Law, § 20.)

For form of enrollment lists for changed districts, see Election Law, § 20.

## FORM No. 11.

(Election Law, § 21.)

## Certificate of Transcripts of Enrollment.

STATE OF NEW YORK, }  
 County of ....., } ss.:

We, the undersigned, the members of the Board of Elections of the county (or city) of ....., the custodians of primary records in and for such county (or city), do hereby certify that ..... was duly enrolled as a member of the ..... party on the ..... day of ....., 19.., in and for the ..... election district of the ..... ward (or assembly district) of the city (or village) of .....

Witness our hands at the city (or village) of ....., this ..... day of ....., 19...

.....  
 .....  
 Custodians of Primary Records.



## FORM No. 13.

(Election Law, § 40.)

## Certificate of Names and Addresses of Officers of Party Committees.

I, . . . . . the duly elected secretary of the State committee of the . . . . . party (or of the county committee of the . . . . . party in and for the county of . . . . ., or as the case may be) do hereby certify that the members of said committee were duly elected at a primary election held on the . . . . . day of . . . . ., 19 . . ., and that said committee duly met on the . . . . . day of . . . . ., 19 . . ., and organized thereupon by the election of . . . . ., who resides at . . . . ., as the chairman thereof, . . . . ., who resides at . . . . ., as the treasurer thereof, and . . . . ., who resides at . . . . ., as the secretary thereof. (Give names and post office addresses of any other officers elected.)

Dated . . . . ., N. Y. . . . ., 19 . . .

Secretary of Committee

N B - This certificate to be filed within three days with Secretary of State and Board of Elections of County.

## FORM No. 14.

(Election Law, § 40.)

## Certification of Rules and Regulations.

I, . . . . ., Secretary of the State committee of the . . . . . party (or of the county committee of the . . . . . party in and for the county of . . . . ., or as the case may be) do hereby certify that the foregoing is a true copy of the rules and regulations for the government of the . . . . . party and the conduct of the official primaries of said party within the county of . . . . . (or as the case may be) adopted by said committee on the . . . . . day of . . . . ., 19 . . .

Dated . . . . ., N. Y. . . . ., 19 . . .

Secretary of Committee

N B - Certified copy of rules to be prepared and filed by secretary with custodian of primary records within three days after adoption.

## FORM No. 17.

(Election Law, § 48.)

For form of petition for designation of candidates for party nomination as for election to party position, see Election Law, § 48.

## Form No. 18.

(Election Law, § 50.)

**Declination by Person Designated.****To the Secretary of State (or custodian of primary records):**

Please take notice that I decline the designation as candidate for nomination by the ..... party for the office of ..... (or the party position of ..... ) tendered to me by the ..... committee of the said party (or by petition of duly enrolled voters of said party), to be voted for at the official primary election to be held on the ..... day of ..... , 19... , certificate of which designation has been filed in your office.

Dated ..... , N. Y., ..... , 19...

STATE OF NEW YORK, }  
COUNTY OF ..... } ss.:

On this ..... day of ..... , 19... , before me personally came ..... , to me known to be the person described in and who executed the foregoing declination, and he acknowledged to me that he executed the same for the purposes therein mentioned.

(Officer taking acknowledgment.)

## FORM No. 19.

(Election Law, § 52.)

**Certificate of Nomination, to Fill Vacancy, by Duly Authorized Committee.**

To the (insert officer with whom original certificate of nomination is filed):  
Whereas,

(here set forth cause of vacancy)

Now, therefore, we ..... and ..... the duly authorized committee to fill vacancies, pursuant to the provisions of section fifty-two of the election law, do hereby certify that we have nominated the following named person to fill the vacancy caused by .....

Name of new candidate.	Place of residence.	Name of original candidate.	Name of political party.
.....	.....	.....	.....

Dated ..... , N. Y., ..... , 19...

(a majority of committee.)

STATE OF NEW YORK, }  
COUNTY OF ..... } ss.:

On the day and date below mentioned, before me personally appeared ..... and ..... to me known to be the persons described in and who executed the foregoing certificate, and who severally acknowledged the execution thereof for the purposes therein set forth, and each of said persons being by me severally duly sworn did depose and say

## ELECTION LAW FORMS.

that the matters therein stated are true to the best of their knowledge and belief.

(signature of committeemen signing certificate.)

Acknowledged, subscribed and sworn to before me, this ..... day of ..... 19..

(Officer taking acknowledgment and oath.)

### FORM No. 20.

(Election Law, § 52.)

#### **Certificate of Board of Elections Where Pasterns are Provided for Primary Elections.**

We, the undersigned, the members of the Board of Elections of the county of ..... and custodians of primary records, in and for such county, do hereby certify that on the ..... day of ..... 19.., after the official primary ballots had been printed for the official primary election to be held on the ..... day of ..... 19.., a new certificate of designation to fill a vacancy in designation for the office (or party position) of ..... to be voted for by the enrolled voters of the ..... party in the place of ..... was received by us from the Secretary of State (or was filed in our office.)

We further certify that we have prepared and we are delivering to you herewith, pursuant to section fifty two of the election law, adhesive pasterns containing the name of the candidate designated to fill said vacancy with directions for the proper use thereof.

We further certify as follows:

1. That the name of the person originally designated is .....
2. That the name of the person designated in the new certificate is .....
3. That the title of the office (or party position) for which the designation is made is .....
4. That the name of the political party to which the committee on vacancies making the designation belongs is the ..... party.
5. That the number of pasterns furnished herewith is .....

Witness our names and official seal, at ..... State of New York, this ..... day of ..... 19..

*Commissioners of Elections and Custodians of Primary Records.*

### FORM No. 21.

(Election Law, § 53.)

For form of official primary ballot, see Election Law, § 54.

## FORM No. 22.

(Election Law, § 70.)

**Oath of Primary Election Officers.**

STATE OF NEW YORK, }

COUNTY OF ALBANY, }

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of (Inspector of Primary Election) according to the best of my ability.

Subscribed and sworn to before me,

this....day of....., 19...

N. B.—To form a part of the return to custodians of primary records.

## FORM No. 23.

(Election Law, § 72.)

**Preliminary Oath by Challenged Voter at Primary Election.**

You do solemnly swear (or affirm) that you will answer truly such questions as shall be put to you touching upon your right to participate in this primary election.

N. B.—After making oath or affirmation, challenged voter must answer the questions prescribed by Election Law, § 72.

## FORM No. 24.

(Election Law, § 75.)

**Certificate of Chairman of General Committee as to Coming Primary Elections, Etc.**

STATE OF NEW YORK, }

COUNTY OF ....., }

I, ....., chairman of the general committee of the..... party of the county of....., do hereby certify that the following is a true and correct list and statement showing the conventions with time and place for the holding thereof; also showing the committees and officers for which delegates, members or candidates (as the case may be), are to be elected at the official primary election to be held on the....day of....., 19.., and showing the number of delegates to conventions, and members of committees to be elected in each unit of representation.

(Here insert full list and statement.)

Witness my hand at the city (or village) of....., this.... day of....., 19...

Chairman of General Committee.

(To be delivered to custodian of primary records at least thirty-five days before each official primary day.)

# ELECTION LAW FORMS.

## FORM No. 25.

(Election Law, § 76.)

For form of notice of official primary to be prepared and published by the custodian of primary records, see requirements specified in Election Law, § 76.

## FORM No. 26.

(Election Law, § 77.)

For forms for appointments to fill vacancies in board of primary election officers, see forms Nos. 32 and 40.

## FORM No. 27.

(Election Law, §§ 78, 78-a.)

For form of primary election poll book, see requirements specified in Election Law, §§ 78, 78-a.

## FORM No. 28.

(Election Law, § 79.)

For form of primary election tally sheet blanks, see requirements specified in Election Law, § 79.

## FORM No. 29.

(Election Law, §§ 85, 87.)

### Ballot Return Sheet.

(Make Return for Each Election District Separate. Not for Primary District.)

To be prepared by the ballot clerks, and attached to the original statement of result made by the inspectors and to each copy, in compliance with section three hundred and fifty-four of the Election Law.

- 1 The number of full sets of primary ballots furnished to election district number ..... of the ..... of ..... County of ..... was.....
2. The number of sets of primary ballots cancelled before delivery to voters by reason of one or more of the sets being found defective in printing or mutilated, all of which were destroyed by us, was.....
3. The number of sets of primary ballots spoiled and returned by voters, all of which were destroyed by us, was.....
4. The number of sets of primary ballots returned to the custodian of primary records or other officer, unused, was....

5. The number of sets of primary ballots actually voted was....  
 6. Total sets of primary ballots accounted for are.....  
 7. The number of sets of detached stubs was.....  
 8. The number of sets of stubs on unused ballots was.....  
 9. The total sets of stubs accounted for are.....

We hereby certify that the foregoing ballot return for election district number.....of the.....of....., County of.....for the primary election held....., 19.., is correct.

Ballot Clerks.

### FORM No. 30.

(Election Law, §§ 79, 85, 87.)

#### Primary Inspectors' Return and Statement of Result.

(Make Return for Each Election District Separate. Not for Primary District.)

Statement of result of the votes cast at the official primary election, held on the....day of....., 19.., by the.....voters of the.....election district of the.....ward or town of.....County of.....and State of New York, made by the inspectors of primary elections in the.....election district of said (ward or town).

#### Return of Ballots Voted.

1. The whole number of primary ballots actually voted, as verified by the return of the ballot clerks attached hereto, was. ....
2. The number of primary ballots cast and found to be entirely blank, all of which were returned by us to the ballot box, was. ....
3. The number of primary ballots cast which were rejected by us as "void" and on which no vote was counted for any candidate, all of which are in the sealed package returned herewith, and on each of which ballots is indorsed the reason for such rejection, was.....
4. The number of primary ballots cast on which votes were counted for one or more candidates, all of which were returned to the ballot box (except those protested as being marked for identification), was.....
5. The total number of ballots accounted for by us is.....

#### Statement and Result of the Votes for the Office of.....

1. The number of ballots cast on which votes were counted for any candidate for office, was.....
2. The number of ballots cast and counted on which there was no vote for the office of....., was.....
3. The whole number of ballots on which votes were counted for the office of....., was.....



4. Of which, . . . . . received . . . . .  
 5. . . . . received . . . . .  
 6. . . . . received . . . . .  
 7. . . . . received . . . . .  
 Etc., etc., etc.

Total, . . . . .

(Continue separate statement for each office.)

The ballots which were objected to as marked for identification were counted for the several candidates named thereon, each of said ballots has been marked by us "Protested as marked for identification," the mark or marking to which objection was made being specified upon the back of each such ballot.

The said several ballots, together with those which were rejected as being void, are herewith returned in a sealed package.

We hereby certify that the foregoing statement of result is true and correct in all respects.

Dated this . . . day of . . . . ., 19 . . .

. . . . .  
 . . . . .  
 . . . . .  
 . . . . .

Board of Inspectors.

N. B.—See, also, § 53 of Election Law, as to including statement of papers received, used, etc.

### FORM No. 31.

(Election Law, § 69.)

#### Certificate of Nomination to Public Office or of Election to Party Position.

Office of the Board of Elections of . . . . . County, N. Y.  
 STATE OF NEW YORK. }

COUNTY OF . . . . .

We, the undersigned, the members of the Board of Elections of the County of . . . . ., and Custodians of Primary Records, in and for such County, having canvassed the whole number of votes cast at the Primary Election held by the . . . . . party in said County of . . . . ., on the . . . . . day of . . . . ., 19 . . . . . according to the original statement of the said votes filed with us in the manner directed by law, do hereby certify that . . . . . was duly nominated as the candidate of the . . . . . party for the office of . . . . . (or elected a Delegate to the State Convention of the . . . . . party to be held at . . . . . on the . . . . . day of . . . . ., 19 . . . . ., or as the case may be).

Witness our names and official seal, at the City of . . . . ., State of New York, this . . . . . day of . . . . ., 19 . . . . .

. . . . .  
 . . . . .  
 . . . . .  
 . . . . .

Commissioners of Elections and Custodians of Primary Records.

## FORM No. 22.

(Election Law, § 90.)

For form of certificate of nomination to fill vacancy in a nomination for public office made at a primary election, see form No. 19, ante, which may be adapted to suit the requirements of Election Law, § 90. See, also, form No. 39, post.

## FORM No. 23.

(Election Law, § 121.)

**Certificate of Nomination by Party Primary for Town, Village and Certain Other Offices.**

We certify that at a party primary representing the ..... party, held at ..... on the ..... day of ..... 19 .., a political party which, at the last preceding general election, at which a governor was elected, cast fifteen thousand votes in the State for such officer, the following named persons were placed in nomination for offices to be filled at the next ensuing general election.

Title of office to be filled.	Name of the candidate.	Name of the party.	Place of resi- dence of candidate.	Place of business.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

We also further certify that the following named persons, .....  
 ....., were appointed a committee for the purpose of filling vacancies, pursuant to section 135 of the Election Law.

.....  
 Presiding Officer of Party Primary.

(Residence, city or town, street and number, if any.)

.....  
 Secretary to Party Primary.

(Residence, city or town, street and number, if any.)

STATE OF NEW YORK, }  
 County of....., } ss.:

..... and ....., being severally sworn, each for himself, says that the said ..... was the presiding officer of the party Primary mentioned and described in the foregoing certificate, and that the said ..... was the secretary of such Party Primary, and that said certificate and the statements therein contained are true, to the best of his information and belief.

.....  
 Severally subscribed and sworn to before me,  
 this ..... day of ..... 19.....

.....  
 (Officer taking oath.)

#### Acknowledgment and Affidavit to be Annexed to Certificate.

STATE OF NEW YORK, }  
 County of....., } ss.:

..... of.....  
 On the day and date below mentioned before me personally appeared ..... to me known and known to me to be the persons described in and who executed the foregoing certificate, and who severally acknowledged the execution thereof for the purposes therein set forth, and each of said persons being by me severally duly sworn depose

and say that the matters therein stated are true to the best of his information and belief.

(Signed)

Acknowledged, subscribed and sworn to before me,  
this ..... day of ..... 19 ..

(Officer taking acknowledgment and oath.)

### FORM No. 25.

(Election Law, §§ 122, 123.)

#### Independent Certificate of Nomination.

To the .....

(Insert name of officer with whom certificate is to be filed.)

We, the undersigned duly qualified voters of the State of New York (or district for which the nomination for public office is made), in accordance with the provisions of sections one hundred and twenty-two and one hundred and twenty-three of the election law, hereby make the following nominations for officers to be filled at the next election in the ..... (state district or election division).

Times of offices to be filled.	Name of the candidate.	Political or other name which signers select.*	Residence of the candidate nominated.†	Place of business.‡
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

We hereby select as an emblem or device to represent and distinguish the candidates hereby nominated by us a.....which emblem or device is shown by the following representation: (Insert facsimile.)

And we do designate and appoint.....and ..... (name, residence and place of business) to represent the signers of this certificate for the purposes set forth in section one hundred and thirty-five of the election law.

We, the undersigned, duly qualified voters of the district for which the nomination for public office is hereby made under the provisions of sections one hundred and twenty-two and one hundred and twenty-three of the election law do hereby declare that it is our intention to support at the polls the candidacy of the person or persons herein nominated for public office.

\* To be designated in not more than five words.

† If in a city, the street and number of residence and place of business.

‡ To be designated in not more than five words and not to include names of any organized political party.



## FORM No. 37.

(Election Law, § 131.)

**Printed List to be Sent by Board of Elections to Each Town Clerk or Alderman in County or City.**

(Same to be posted by town clerk or alderman in election districts.)  
 To the (Town Clerk or Alderman) of (Town of ..... or ... Ward  
 of .....):

Please take notice that the following named persons whose certificates of nomination have been filed with us, or certified to us, as candidates for office, are to be voted for at the election to be held on the....day of....., 19..

Name of candidate.	Place of residence.*	Place of business.*	Office to be filled.	Party or other designation of candidate.	Fac simile of emblems or devices to represent and distinguish candidates

(Signed) .....

Members of Board of Election.

## FORM No. 38.

(Election Law, § 132.)

**List of Nominations to be Posted by Town or Village Clerk at Other than Time of General Election.**

To the Voters of (town or village of .....):

The following is a true and correct list of all nominations of candidates for offices to be filled at the ..... election to be held ....., 19.., filed with me pursuant to the provisions of the Election Law:

Name of candidates.	Residence.	Office to be filled.	Party or other designation of candidates.	Fac simile of emblems or devices to represent and distinguish candidates.

(Here insert fac similes opposite candidates of each party.)

Clerk.

\* If in a city, the street number of residence and place of business.



## FORM No. 39.

(Election Law, § 133.)

**Declination of Nomination by Person Nominated Otherwise Than by Official Primary Election.***To the Secretary of State (or other officer or board):*

Sir—Please take notice that I decline the nomination for the office of  
 ....., tendered to me by the (convention, primary or voters) of the  
 ..... party, filed in your office

Dated....., N. Y., ..... 19...

Yours,

STATE OF NEW YORK,

COUNTY OF ....., ss.:

or

On this .. day of .., 19..., before me personally came.....  
 to me known to be the person described in, and who executed the foregoing  
 declination, and he acknowledged to me that he executed the same for  
 the purposes therein mentioned.

.....  
 (Officer taking acknowledgment.)

## FORM No. 40.

(Election Law, §§ 135, 136.)

**Filling Vacancies in Nominations by Duly Authorized Committees where Vacancy Occurs in Nomination Made Otherwise Than by Official Primary Election.**

*To the (insert officer with whom original certificate of nomination is filed):*  
 Whereas,

(Here set forth cause of vacancy or nature of defect of certificate of nomination.)

Now, therefore, I (or we) ....., the duly authorized committee for the purposes specified in section one hundred and thirty five of the election law, pursuant to the provisions of said section, do hereby certify that I (or we) have nominated the following named person (or persons) to fill the vacancy (or vacancies) caused by

Name of new candidate	Place of residence.	Place of business	Office for which nominated	Name of original candidate.	Name of political party or other nominating body
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

(Signed)

A majority of the committee.

(Signers should state residence, city or town, street and number, if any.)

**Acknowledgment and Affidavit to be Annexed to Certificate.**

STATE OF NEW YORK, )  
 COUNTY OF ..... ) ss.:  
 ..... OF ..... )

On the day and date below mentioned before me personally appeared ..... , to me known and known to me to be the persons described in and who executed the foregoing certificate, and who severally acknowledged the execution thereof for the purposes therein set forth, and each of said persons being by me severally duly sworn depose and say that the matters therein stated are true to the best of his information and belief.

(Signed)  
 .....  
 .....  
 .....

Acknowledged, subscribed and sworn to before

me, this ..... day of ..... 19...

(Officer taking acknowledgment and oath.)

**FORM No. 41.**

(Election Law, § 137.)

**Certificate of Board of Elections where Death of Candidate After Printing of Ballots Requires Use of Pastors.**

We, the undersigned, the members of the Board of Elections of the County of ..... do hereby certify that on the ..... day of ..... 19.., after the official ballots had been printed for the general election to be held on the ..... day of ..... 19.., a new certificate of nomination to fill a vacancy in nomination for the office of ..... caused by the death of ....., the duly nominated candidate of the ..... party for such office, was received by us from the secretary of state (or was filed in our office.)

We further certify that we have prepared and we are delivering to you herewith, pursuant to section one hundred and thirty-seven of the Election Law, adhesive pasters containing the name of the candidate nominated to fill the vacancy and the title of the office for which he was nominated.

We further certify as follows:

1. That the name of the original candidate is .....
  2. That the name of the new nominee is .....
  3. That the title of the office for which the nomination is made is .....
  4. That the name of the political party (or independent body) making the nomination is .....
  5. That the number of pasters furnished herewith is .....
- Witness our names and official seal, at ..... State of New York,  
 this ..... day of ..... 19...

.....  
 .....  
 Members of Board of Elections.

**FORM No. 42.**

(Election Law, § 155.)

For form of register outside of city of over one million inhabitants, see Election Law, § 155.

**FORM No. 42a.**

(Election Law, § 156.)

For form of register in city of over one million inhabitants, see Election Law, § 156.

## ELECTION LAW FORMS.

## FORM No. 43.

(Election Law, § 157.)

For form of registry lists, see Election Law, § 157.

## FORM No. 44.

(Election Law, § 163.)

Affidavit as to Residence.

STATE OF NEW YORK, } ss.:

COUNTY OF .....

, being duly sworn, says:

1. I am ..... years old and a student at ..... I intend
2. I reside at No. ...., city and county of ..... county, and to make my  
to reside there or elsewhere in ..... county, and to make my  
domicile there indefinitely, and I have no present intention of residing else-  
where. My business or occupation is ..... located at No.  
....., city and county of .....
3. Prior to ..... I resided at ..... but I have  
no present intention to reside there again, and have notified in writing the  
board of inspectors and registration of district ..... that I have  
changed my residence to the county of ..... and that my name  
should no longer remain on the list of registered voters in said district.

Sworn to before me  
this ..... day of ..... 19 ..

NOTE.—See Rept. of Atty Gen'l, Apr. 26, 1909.

## FORM No. 45.

(Election Law, § 164.)

For form of oath to be administered to illiterate or disabled voters, see  
Election Law, § 164.

## FORM No. 46.

(Election Law, § 168.)

For form of challenge affidavits, see Election Law, § 168.

## FORM No. 47.

(Election Law, § 169.)

For form of oath to be administered to applicant for registration who  
has been challenged, see Election Law, § 169.

## FORM NO. 47a.

(Election Law, § 171.)

For form of duplicate book of challenge affidavits, see Election Law, § 171.

## FORM NO. 48.

(Election Law, § 173.)

## Oath for Record of Challenge.

You do swear (or affirm) that you have reason to believe that ..... whose name appears on the register of electors in this election district, will not be qualified to vote at the election for which such register of electors is made.

## FORM NO. 49.

(Election Law, § 176.)

**Certification of Register at Close of Each Meeting for Registration in a City or District Wholly Within a Village of 5,000 or More.**

We, the undersigned inspectors of election of the ..... election district of the ..... ward (or assembly district) of the city (or village) of ..... do hereby severally certify that the within (or attached) register, as it now is, comprising (here insert the number) names, is a true and correct register of the names and residences of all the voters qualified to vote at the ..... election to be held in said district on the ..... day of ....., 19.., who have personally appeared before the undersigned board of registration.

Dated ....., N. Y., ....., 19...

.....  
 .....  
 .....  
 .....

*Inspectors.*

N. B.—To be signed by all the inspectors.

## FORM No. 50.

(Election Law, § 176.)

**Certification of Register at Close of Each Meeting for Registration, Elsewhere than in a City or District Wholly Within a Village of 5,000 or More.**

We, the undersigned inspectors of election of the ..... election district of the town (or village) of ....., do hereby severally certify that the within (or attached) register, as it now is, comprising (here insert the number) names, is a true and correct register of all voters qualified to vote at the ..... election to be held in said district on the ..... day of ....., 19.., who have personally applied for registration, or whose names the board of registration was required by law to place thereon.

Dated ....., N. Y., ....., 19...

.....  
 .....  
 .....  
 .....

*Inspectors.*

N. B.—To be signed by all the inspectors.

**FORM No. 51.**

(Election Law, § 181.)

**Certificate of Total Number of Registered Voters.***To the (insert name of officer or board):*

We, the undersigned, composing the board of inspectors of ..... election district of the ..... of ....., do hereby certify that at the close of registration, on the ..... day of registration, the total number of voters registered in such district was .....

Dated at ....., this ..... of ....., 19...

.....  
 .....  
 .....  
 .....

*Board of Inspectors.*

N. B.—At the close of registration on the fourth day, the above certificate upon blanks furnished by the secretary of state, to be forthwith filed with or mailed to the officer or board charged with the duty of furnishing ballots for such election district, and to the state superintendents of elections.

**FORM No. 52.**

(Election Law, § 181.)

**Certificate of Number of Voters Registered at Close of Each Registration Day.***To the (insert name of officer or board):*

We, the undersigned, composing the board of inspectors of the ..... election district of the ..... ward of the city of ....., do hereby certify that at the close of registration on the ..... day of ....., 19..., the total number of voters registered on such day in said district was .....

Dated at ....., N. Y., this ..... day of ....., 19...

.....  
 .....  
 .....  
 .....

*Board of Inspectors.*

N. B.—A certificate like the above must be filled out and signed by the inspectors at the close of each day of registration and filed with or mailed to the officer or board charged with the duty of furnishing ballots for such election district, and the chairman of the board must also file a similar certificate with the state superintendent of elections.

**FORM No. 53.**

(Election Law, § 194.)

For form of recommendation for appointment of commissioners of elections, see Election Law, § 194.

**FORM No. 54.**

(Election Law, § 307.)

**Oath of Office for Election Officers.**

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New York, and that





representation on board of inspectors of said district, do hereby appoint . . . to the office of poll clerk (or general clerk) in and for said district, and . . . to the office of ballot clerk (or general clerk), pursuant to the provisions of section three hundred and twelve of the election law.

Dated this . . . . . day of . . . . ., 19 . . . . .

Inspectors of Election

N. B. To be filed with the town clerk, and a copy thereof with the post office address of each person mailed to the county clerk.

#### FORM No. 57.

(Election Law, § 313 ¶ 1.)

**Appointment by Inspector of Voter to Act as Member of Board of Inspectors in Case of Vacancy or Absence of an Inspector at Any Meeting of Inspectors.**

There being a vacancy in the office of inspector of election (or . . . . . being absent from the meeting of the Board of Inspectors this day) in the . . . . . election district of the . . . . . of . . . . ., I, the inspector present, representing the same political party, do hereby appoint pursuant to the election law, . . . . ., who is a qualified voter of said district and a member of the same political party as said absent inspector, to act in the place of said absent inspector for the whole of this day

(Inspector of election)

Dated this . . . . . day of . . . . ., 19 . . . . .

N. B. Person so appointed entitled to be paid the amount which the absent inspector would have been entitled to if he had been present. Person appointed must take oath of office.

#### FORM No. 58.

(Election Law, § 313, ¶ 2.)

**Appointment by Poll Clerk, Ballot Clerk or General Clerk of Voters to Act as Members of Board of Inspectors Where Two Inspectors of Same Party are Absent on Election Day**

. . . . . and . . . . . inspectors of election of the . . . . . election district of the . . . . . of . . . . . representing the . . . . . party, being absent from the meeting of the Board of Inspectors on election day held on the . . . . . day of . . . . ., 19 . . . . ., being the poll clerk if he be present and if he be absent then the ballot clerk or general clerk) and being a member of the same political party as the said absent inspectors, do hereby appoint, pursuant to the election law, . . . . . and . . . . . who are qualified voters of the said district and who are members of the same political party as the said absent inspectors, to act in the place of said absent inspectors for the whole of this day.

(Poll clerk, ballot clerk or general clerk, as the case may be)

Dated this . . . . . day of . . . . ., 19 . . . . .

N. B. Persons so appointed entitled to be paid the amounts which the absent inspectors would have been entitled to, if present. Persons appointed must take oath of office.

## FORM No. 59.

(Election Law, § 313, ¶ 3.)

**Appointment by Inspector or Inspectors Present, of Voters to Act as Members of Board of Inspectors Where Two Inspectors of Same Party Are Absent on Any Registration Day.**

..... and ....., inspectors of election for the ..... election district of the ..... of ....., representing the ..... party, being absent from the meeting of the Board of Inspectors held this day for the purpose of registration in said election district, I (or we), the inspector (or inspectors) present at said meeting, do hereby appoint, pursuant to the election law, ..... and ..... who are qualified voters of said district and who are members of the same political party as said absent inspectors, to act until such absent inspectors or their duly appointed successors shall appear.

(Inspector or inspectors of election.)

Dated this ..... day of ....., 19...

N. B.—Persons so serving temporarily shall serve without pay. Persons appointed must take oath of office.

## FORM No. 60.

(Election Law, § 313, ¶ 4.)

**Designations, by Voters Present, to Fill Vacancies in Board of Inspectors Where Offices of All Inspectors Are Vacant or No Inspector Appears Within One Hour.**

The offices of all the inspectors of the ..... election district of the ..... of ..... being vacant (or no inspector of the ..... election district of the ..... of ..... having appeared within one hour after the time fixed by law for the opening of the meeting of the Board of Inspectors, to be held this day) we, the undersigned, qualified voters of said district present, hereby designate and appoint ..... and ....., who are qualified voters of said district and who belong to and are equally divided between the two political parties which at the last preceding general election, cast the highest and the next highest number of votes, to fill such vacancies (or ..... to act in the place of ..... to act in the place of ....., etc.,) until the said absent inspectors respectively appear, the said persons so designated being respectively members of the same political party as such absent inspectors.

Dated this ..... day of ....., 19 ..

N. B.—To be signed by not less than ten qualified voters of the district present. Persons appointed must take oath of office.

## FORM No. 61.

(Election Law, § 313, ¶ 5.)

**Appointment of Poll Clerk, Ballot Clerk or General Clerk in Case of Vacancy or Absence from Meetings of Inspectors.**

There being a vacancy in the office of (poll clerk, ballot clerk or general clerk) (or ..... a duly appointed [poll clerk, ballot clerk or general clerk] being absent from the meeting of inspectors this day) in the ..... election district of the ..... of ....., I (or we) the inspector (or inspectors) present repre-

sending the same political party as the said absent (poll clerk, ballot clerk or general clerk) do hereby appoint, pursuant to the election law, . . . . ., who is a qualified voter of said district and who is a member of the same political party as the said absent (poll clerk, ballot clerk or general clerk) to fill such vacancy.

.....  
 .....  
 (Inspector or inspectors of election.)

Dated this ..... day of ....., 19...

N. B.—Person so designated must take oath of office.

### FORM No. 62.

(Election Law, § 315.)

#### Precept in Case of Refusal to Obey the Lawful Commands of the Inspectors.

The People of the State of New York to the Sheriff of the County of ..... or any constable, peace or police officer of said County:

Whereas, at a meeting of the Board of Inspectors held in and for the ..... election district of the ..... of ..... in said county of ..... did unlawfully and intentionally (here describe the act of disobedience, for example—obstruct the passageway to the polls thereby hindering and preventing free access to the said polls) in open and known violation of the command of us, the undersigned, inspectors of election, previously and publicly given in his hearing, you are therefore hereby ordered forthwith to arrest the said ..... and him safely keep and retain in custody until (the registration of voters or the canvass of the votes, as the case may be) shall be completed.

This order however shall not be so executed by you as to prohibit said person so taken into your custody from voting.

Given under our hands this ..... day of ....., 19...

.....  
 .....  
 .....  
 .....  
 .....  
 (Inspectors of election.)

#### Deputation to be Written on Back of Precept in Case No Sheriff, Constable, Peace or Police Officer is Present.

No sheriff, constable, peace or police officer being present to whom the within precept can be delivered, we hereby depute ..... to execute the within process.

### FORM No. 63.

(Election Law, § 315.)

#### Precept in Case of Disorderly Conduct in Presence or Hearing of Inspectors.

The People of the State of New York to the Sheriff of the County of ..... or any constable, peace or police officer of said County:

Whereas, at a meeting of the Board of Inspectors of election held in and for the ..... election district of the ..... of ..... in said county, ..... in the presence (or in the hearing) of us, the undersigned, inspectors of election of said district, did by disorderly conduct, to wit, by (here describe the misconduct particularly, as for example—by

loud and boisterous noises or by violent stamping ..... etc., or by commencing a riot and affray with divers persons or as the case may be) interrupt and disturb the proceedings of us, the said inspectors, in conducting the said meeting of said Board, you are therefore hereby ordered forthwith to arrest the said ..... and him safely keep and retain in custody until (the registration of voters or the canvass of the votes given in election district) shall be completed.

This order however shall not be so executed by you as to prohibit said person so taken into your custody from voting.

Given under our hands this ..... day of ....., 19...

(Inspectors of election.)

Deputation to be Written on Back of Precept in Case No Sheriff, Constable, Peace or Police Officer is Present.

No sheriff, constable, peace or police officer being present to whom the within precept can be delivered, we hereby depute.....to execute the within process.

#### FORM No. 64.

(Election Law, § 319.)

#### Bill for Compensation in Towns.

....., N. Y....., 19...  
Town of .....  
To ....., Inspector of Election, Dr.  
19...

Oct.	to attendance at meeting for registration.....	\$
Nov.	to attendance at election.....	\$
Nov.	to filing election blanks, etc., in County Clerk's office.....	\$5.00
Nov.	to mileage for filing election returns, etc., in County Clerk's office, 20 miles at 4c.*.....	\$ 80
		<hr/>
		\$....

Received payment, .....

STATE OF NEW YORK, }

COUNTY OF ....., ss.:

..... OF .....

....., inspector of election for the ..... election district of the Town of ....., in said County, being duly sworn deposes and says, that the items contained in the foregoing account are correct and that the services charged therein have been in fact rendered and that no part thereof has been paid or satisfied.

Sworn to before me, this ..... }  
day of ....., 19... }

(Officer taking affidavit.)

N. B.—The above itemized account and oath is required by Town Law, section 175, and the oath may be taken before the chairman of the Town Board or any other person authorized to administer oaths.

\* In county seat towns, inspectors cannot charge for this service and only the inspectors designated to file returns should include this item in his bill.

**FORM No. 65.**

(Election Law, § 331.)

**For form of general ballot, see Election Law, § 331.****FORM No. 66.**

(Election Law, § 332.)

**For form of ballot for questions submitted, see Election Law, § 332.****FORM No. 67.**

(Election Law, § 333.)

**For form of sample ballot, see Election Law, § 333.****FORM No. 68.**

(Election Law, § 333.)

**Instruction Card to Be Printed in English and in Each of Such Other Languages as the Officer or Officers Charged with Providing Them Shall Deem Necessary, to Be Provided for Each Polling Place on Election Day.**

**Instructions for the Guidance of Voters.\***

**Obtaining Ballots.**—While the polls of the election are open, the voters entitled to vote and who have not previously voted thereat, may enter within the guard-rail at the polling place of such election for the purpose of voting in such order that there shall not, at any time, be within such guard-rail more than twice as many voters as there are voting booths thereat in addition to the persons lawfully within such guard-rail for other purposes than voting. The voter shall enter within the guard-rail through the entrance provided and shall forthwith proceed to the inspectors and give his name, and if in a city or village of 5000 inhabitants or over, his residence by street and number, or if it have no street number, a brief description of the locality thereof, and if required by the inspectors shall state whether he is over or under 21 years of age. One of the inspectors shall thereupon announce the name and residence of the voter in a loud and distinct tone of voice. No persons shall be allowed to vote in any election district at any election where voters are required to be registered unless his name shall be upon the registration books of such election district.

The right of any person to vote whose name is on such register shall be subject to challenge. If such voter is entitled to vote thereat and is not challenged or if challenged and the challenge be decided in his favor, one of the ballot clerks shall then deliver to him one official ballot or a set of official ballots, folded by such ballot clerk in the proper manner for voting.

No person other than an inspector or ballot clerk shall deliver to any voter within such guard-rail any ballot and they shall deliver only such ballots as the voter is legally entitled to vote and also the sample ballot when the same is asked for. (Part of Election Law, § 356.)

**Assistance to Disabled or Illiterate Voters.**—Any voter who shall, at the time of registration, have made oath of physical disability or illiteracy, as prescribed by section one hundred and sixty-four of this chapter; or who, being duly registered in an election district where personal registration by all voters is required by law, shall state under oath to the inspectors of election on the day of election that, by reason of some accident, the time and place of

\* Statute requires that these instructions be set in clear, large type, in red ink. Election Law, § 333.

which he must specify, or of disease, the nature of which he must also specify, he has, since the day upon which he registered, lost the use of both hands, or become totally blind, or afflicted by such degree of blindness as will prevent him, with the aid of glasses, from seeing the names printed upon the official ballot, or so crippled that he cannot enter the voting booth and prepare his ballot without assistance; or any voter in an election district who is not required by law to personally register, who is unable to write by reason of illiteracy, or is physically disabled in one or more ways described in section one hundred and sixty-four of this chapter, and who shall make the statement under oath to the inspectors in the form required in said section, may choose two of the election officers, both of whom shall not be of the same political faith, to enter the booth with him to assist him in preparing his ballots. At any town meeting or village election where the election officers are all of the same political faith, any voter entitled to assistance as herein provided may select one of such election officers and one voter of such town or village of opposite political faith from such election officer so selected, to render such assistance. \* \* \*

No voter shall otherwise ask or receive the assistance of any person within the polling place in the preparation of his ballot, or divulge to any one within the polling place the name of any candidate for whom he intends to vote or has voted. (Part of Election Law, § 357.)

**Preparation of Ballots by Voters.**—On receiving his ballot the voter shall forthwith and without leaving the inclosed space retire alone, unless he be one that is entitled to assistance in the preparation of his ballot, to one of the voting booths, and without undue delay unfold and mark his ballot as hereafter prescribed. No voter shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and voters waiting to occupy the same.

It shall be unlawful to deface or tear an official ballot in any manner; or to erase any printed line, letter or word therefrom; or to erase any name or mark written thereon by a voter. If a voter wrongly mark, deface, or tear a ballot or one of a set of ballots, he may successively obtain others, one set at a time, not exceeding in all three sets, upon returning to the ballot clerks each set of ballots already received.

The voter shall mark his ballot with a pencil having black lead as follows and not otherwise:

1. To vote for an entire group of presidential electors of any party by means of a single mark, he shall make a cross X mark in the circle above the party column.

2. To vote for any candidate on any ballot, except for an entire group of presidential electors by means of a single mark, he shall make a cross X mark in the voting square at the left of the candidate's name.

3. If a voter makes a cross X mark in the circle above a party column and also makes a cross X mark in one or more voting squares at the left of the names of one or more presidential electors or writes in a name or names, he shall be deemed to have voted for the electors whose names are thus specially indicated and also for all the electors on the ticket so marked in the circle, except those whose names are opposite to the names so specially indicated.

4. To vote for any candidate not on the ballot, he shall write the candidate's name on a line left blank in the appropriate place.

5. To vote on any constitutional amendment or question submitted, he shall make a cross X mark in the appropriate voting square at the left of the question as printed on the ballot.

A cross X mark shall consist of any straight line crossing any other straight line, at any angle, within a circle or voting square. Any mark other than a cross X mark or any erasure of any kind shall make the whole ballot void; but no ballot shall be declared void because a cross X mark thereon is irregular in character. Any ballot which is defaced or torn by the voter shall be void. If a voter shall do any act extrinsic to the ballot itself, such as in-



closing any paper or other article in the folded ballot, such ballot shall be void. If the elector marks more names than there are persons to be elected to an office, or if for any other reason it is impossible to determine the elector's choice of a candidate for an office to be filled, his vote shall not be counted for such office but shall be returned as a blank vote for such office. Where, in the case of a candidate for governor, the candidate is nominated by two or more political organizations, and the voter makes a cross X mark in two or more voting spaces or squares, his vote for such candidate shall be counted, but he shall not be recorded in the tally sheet or returns as voting with any particular party or independent body. (Election Law, § 358.)

**Manner of Voting.**—When the ballot or ballots which a voter has received shall be prepared as provided in the preceding section, he shall leave the voting booth with his ballot folded so as to conceal the face of the ballot, but show the indorsement and fac simile of the signature of the official on the back thereof, and, keeping the same so folded, shall proceed at once to the inspector in charge of the ballot box, and shall offer the same to such inspector. Such inspector shall announce the name of the voter and the printed number on the stub of the official ballot so delivered to him in a loud and distinct tone of voice. If such voter be entitled then and there to vote, and be not challenged, or if challenged and the challenge be decided in his favor, and if his ballot or ballots are properly folded, and have no mark or tear visible on the outside thereof, except the printed number on the stub and the printed indorsement on the back, and if such printed number is the same as that entered on the poll books as the number on the stub or stubs of the official ballot or set of ballots last delivered to him by the ballot clerks, such inspector shall receive such ballot or ballots, and after removing the stub or stubs therefrom in plain view of the voter, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot box for the reception of voted ballots and the stubs in the box for detached ballot stubs. Upon voting, the voter shall forthwith pass outside the guard-rail unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting.

No official ballot folded shall be unfolded outside the voting booth. No person to whom any official ballot shall be delivered shall leave the space within the guard-rail until after he shall have delivered back all such ballots received by him either to the inspectors or to the ballot clerks and a violation of this provision is a misdemeanor.

When a person shall have received an official ballot from the ballot clerks or inspectors, as hereinbefore provided, he shall be deemed to have commenced the act of voting, and if, after receiving such official ballot, he shall leave the space inclosed by the guard-rail before the deposit of his ballot in the ballot box, as hereinbefore provided, he shall not be entitled to pass again within the guard-rail for the purpose of voting, or to receive any further ballots. (Part of Election Law, § 359.)

**Penal Law Provisions Relating to Crimes against the Elective Franchise.**—(Here in smaller type follow with a copy of each of the sections of the Penal Law relating to crimes against the elective franchise which are given in Part 5, ante.)

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#### FORM No. 69.

(Election Law, § 335.)

For form of ballot clerk's return, see Election Law, § 334.

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#### FORM No. 70.

(Election Law, § 337.)

For form of return and tally of votes cast for presidential electors, see Election Law, § 337.

## FORM No. 71.

(Election Law, § 338.)

For form of return and tally of votes for officers other than presidential electors, see Election Law, § 338.

**FORM No. 79.**

(Election Law, § 339.)

For form of return and tally of votes on questions submitted, see Election Law, § 332.

**FORM No. 72**

(Election Law, § 341.)

For form of ballots in towns in which town meetings are held at the time of general elections, see Election Law, § 341.

**FORM No. 74**

(Election Law, § 348.)

**Election Inspectors' Receipt for Official Ballots, Etc., Received from Town or City Clerk.**

Received of.....(City or Town Clerk):

One sealed package marked on the outside thereof as containing.....  
official ballots and indorsed with the designation of this election district.

One sealed package marked on the outside thereof as containing.....  
sample ballots and indorsed with the designation of this election district.

One sealed package with a label on the outside thereof specifying that such package contains.....instruction cards, two poll books,..... distance markers, two tally sheets, and three complete election return blanks for the use of inspectors and ballot clerks, heavy manilla envelopes for statements and returns, sealing wax, pencils having black lead only, pens, penholders, blotting paper and ink (or as the case may be).

Dated....., N. Y., this }  
 ....day of..... 19...

(Inspectors of election for the.....  
election district of the.....of.....)

**FORM No. 26**

(Election Law, § 345.)

**For form of unofficial ballots, see Election Law, § 246.**

**FORM No. 76.**

(Election Law, § 356.)

**Proclamation of Opening the Polls.**

Hear ye! hear ye! hear ye! The polls of this election are open, and all persons attending the same are strictly charged and commanded, by the authority and in the name of the people of the State, to keep the peace thereof during their attendance at this election on pain of imprisonment. And all persons are desired to take notice that the polls will be closed at five o'clock in the afternoon.

**FORM No. 77.**

(Election Law, § 352.)

**Certificate of Appointment of Watchers.**

At a meeting of the..... committee of the..... party (or independent body), a political party (or independent body) which has duly filed certificates of nomination of candidates for offices to be filled at the ..... election to be held on the ..... day of....., 19..., the following named persons..... and..... were, by virtue of the powers given to the said political organization (or independent body) by section 352 of the election law, appointed watchers to attend the polling places in the..... election district of the town (or ward) of..... in the county of .....

Witness, the signature of the chairman (or secretary) of the..... committee of said political party (or independent body) this..... day of....., 19...

.....  
(Chairman or Secretary.)

**FORM No. 76.**

(Election Law, § 355.)

For form of poll book for keeping the list of voters voting or offering to vote at elections, see Election Law, § 355.

**FORM No. 79.**

(Election Law, §§ 357, 357a.)

For oath of Illiterate or disabled voters, see Election Law, §§ 164, 357.

**FORM No. 80.**

(Election Law, § 357.)

**Oath to be Taken by Election Officers Before Opening of Polls on Election Day.**

STATE OF NEW YORK.)

COUNTY OF ..... ) ss.:  
..... of ..... )

I do solemnly swear (or affirm) that I will not in any manner request or seek to persuade, or induce any voter to vote any particular ticket or

for any particular candidate and that I will not keep or make any memorandum or entry of anything occurring within the booth and that I will not, directly or indirectly, reveal to any person the name of any candidate voted for by any voter or which ticket he has voted or anything occurring within the voting booth, except I be called upon to testify in a judicial proceeding for a violation of the election law.

Subscribed and sworn to before me, {  
this....day of....., 19... }

(Officer administering oath.)

### FORM No. 81.

(Election Law, § 362.)

For form of preliminary oath on challenge in relation to right to vote at elections, see Election Law, § 362.

### FORM No. 82.

(Election Law, § 362.)

**Questions to be Put to Challenged Voters by Inspectors After Administering Preliminary Oath.**

1. What is your name?
2. What was your last place of residence before you came into this election district?
3. Where do you now reside? State as precisely as you are able the particular locality of your place of residence.
4. Are you a citizen of the United States?
5. Are you a native or naturalized citizen?
6. (If a naturalized citizen) When were you naturalized?
7. Where and in what court or before what officer were you naturalized?
8. Did you come into this election district for the purpose of voting at this election?
9. How long do you contemplate residing in this election district?
10. What is your age?
11. How long have you resided in this election district?
12. How long have you resided in this county?
13. How long have you resided in this state?
14. How long have you resided in the United States?
15. Have you made any bet or wager or are you directly or indirectly interested in any bet or wager depending on the result of this election?
16. Have you received or offered to receive or do you expect to receive any money or other valuable thing as a compensation or reward for giving your vote at this election?
17. Have you paid, offered or promised to pay, contributed, offered or promised to contribute, to another, to be paid or used, any money or other valuable thing, or made any promise, to influence the giving or withholding of any vote at this election?

18. Have you been convicted of bribery or of any infamous crime or if convicted, have you been pardoned and restored to all the rights of citizenship?

In addition, such other questions may be asked which may tend to test the qualifications of the persons offering to vote as a resident of the election district, his citizenship, or his right to vote at such election at such polling place.

FORM No. 84

(Election Law, § 363.)

For form of general oath and additional oaths to be administered by one of the inspectors to a person persisting in his claim to vote when challenge is not withdrawn, see Election Law, § 363.

**FORM No. 84**

(Election Law, § 364.)

### Record of Persons Challenged.

\_\_\_\_\_ N. Y.

19...

.....Election District of the  
.....of.....

At the.....election held in the above election district on the..... day of....., 19.., the following proceedings were held and conducted by us, the inspectors of election of the said election district, in respect to the challenging and administering oaths to persons offering to vote:

(Here have one of the inspectors enter the name of every person who shall be challenged or take either of the oaths provided by the Election Law, specifying in each case whether the preliminary oath or the general oath, or both, were taken.)

We further certify that the above minutes are all of the minutes of our proceedings in respect to all persons challenged at the election held in this district on said... day of..... 19...

(Inspector of Election.)

## FORM No. 85.

(Election Law, § 373.)

For form of statement of return of canvass, see Election Law, § 573.

**FORM NO. 85.**

(Election Law, § 375.)

**Proclamation of Result of Election.**

Hear ye! hear ye! hear ye! The whole number of votes cast at this election at this polling place for all candidates for the office of (Governor) was.....

The whole number of votes cast at this election at this polling place for all candidates for the office of (Lieutenant Governor) was..... (Proceed on with the whole number of votes cast for all candidates for office.)

The whole number of votes cast at this election at this polling place upon (here set forth any proposed constitutional amendment or any question or proposition, if any, voted upon at such election) was..... (Proceed on with each constitutional amendment or other question or proposition.)

The whole number of votes given for.....for the office of (Governor) was.....

The whole number of votes given for.....for the office of (Governor) was..... (Proceed with each person voted for, for the office of [Governor] giving the number of votes given for each one, for that office.)

The whole number of votes given for.....for the office of (Lieutenant Governor) was.....

The whole number of votes given for.....for the office of (Lieutenant Governor) was..... (Proceed with each person voted for, for the office of [Lieutenant Governor] giving the whole number of votes given for each one for that office.)

Proceed in similar manner with each office for which votes were cast at such election at such polling place, and follow with a statement of the whole number of votes given respectively for and against each proposed constitutional amendment or other question or proposition, if any, voted upon at such election.

**FORM NO. 86a.**

(Election Law, § 397.)

For form of ballots for voting machines, see Election Law, § 397.

**FORM NO. 87.**

(Election Law, § 437.)

For forms of statements of canvass by county boards of canvassers, see Election Law, § 437.

**FORM NO. 88.**

(Election Law, § 480.)

For form of reports by lodging-house and hotel keepers, see Election Law, § 480.

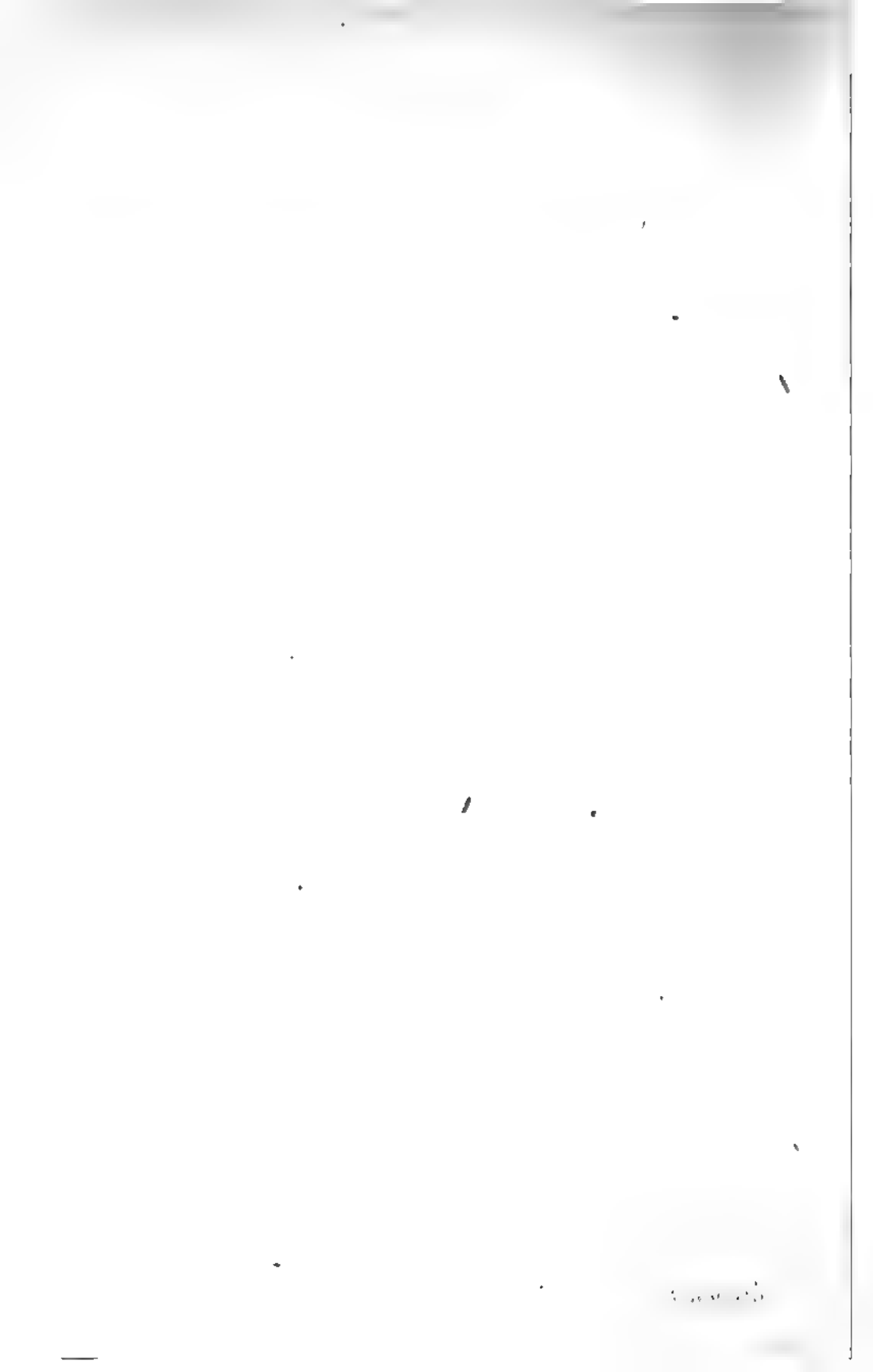




**PART 13.**

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**GENERAL INDEX.**



# GENERAL INDEX.

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\* Although this office no longer exists, many sections of the law referring to it have been left unchanged — Ed.

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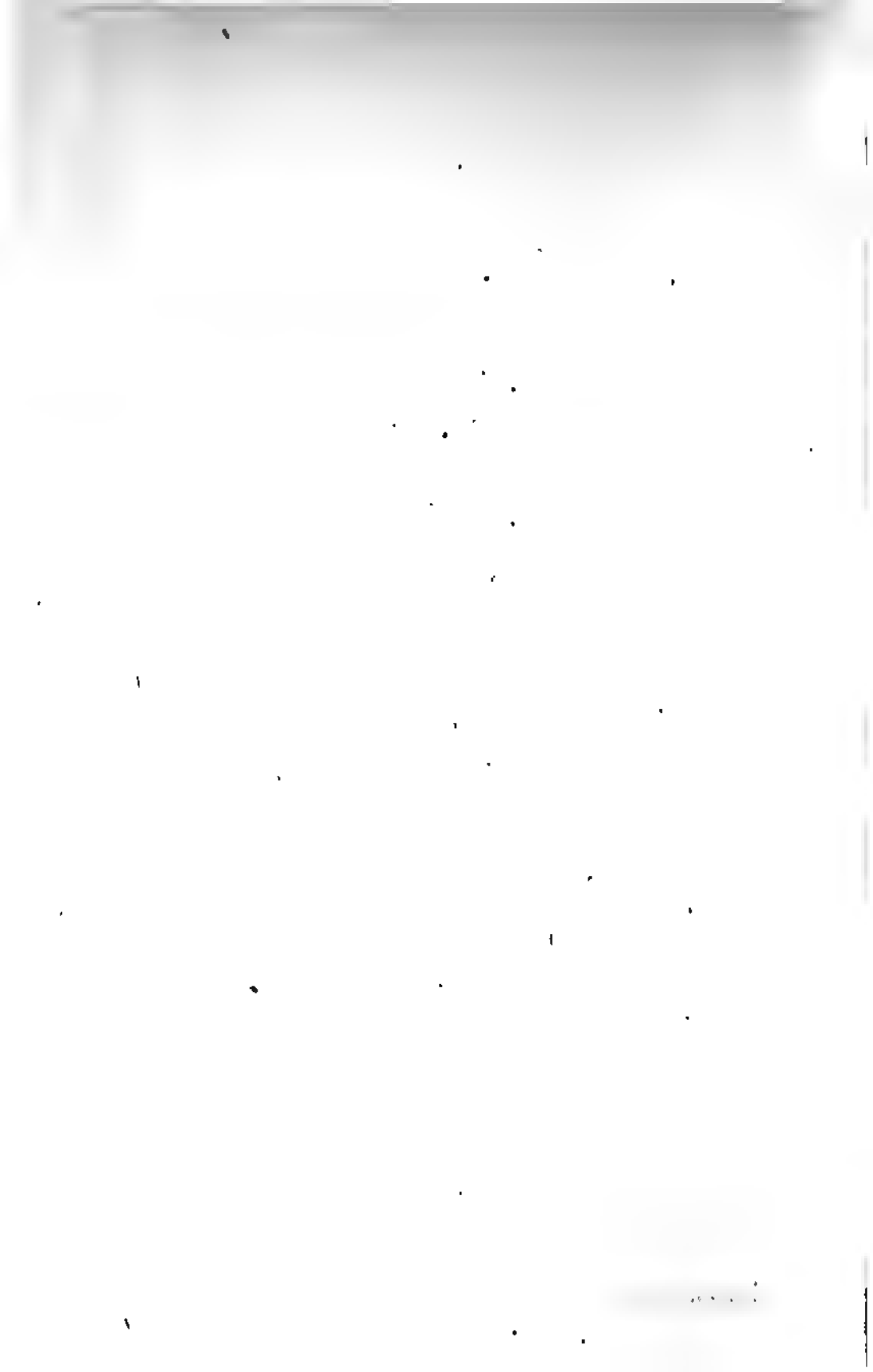
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